

Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto





THE

90

# REVISED STATUTES

OF

ONTARIO,

BEING A CONSOLIDATION OF THE PUBLIC GENERAL ACTS  
OF THE LEGISLATURE OF ONTARIO, WITH SUCH  
OF THE PUBLIC GENERAL ACTS OF THE  
LATE PROVINCE OF CANADA.

AS RELATE TO MATTERS WITHIN

THE AUTHORITY OF THE LEGISLATURE OF ONTARIO.

VOL. I.



11385-2  
2/6/11

Toronto:

PRINTED BY JOHN NOTMAN,

LAW PRINTER TO THE QUEEN'S MOST EXCELLENT MAJESTY,

ANNO DOMINI MDCCCLXXVII.



PRINTED AND BOUND BY  
HUNTER, ROSE & CO.,  
TORONTO,



## CORRIGENDA ET ADDENDA.

---

### PAGE

- 17.—Sub-clause 4. The reference should be C. S. U. C. c. 3, s. 1 (8).  
20.—Sub-clause 12. The reference should be C. S. U. C. c. 3, s. 1 (39).  
25.—Sub-clause 31. The reference should be C. S. U. C. c. 3, s. 1 (14).  
289.—Instead of reference to “s. 356” of Rev. Stat., c. 174, read “ss. 360 and 362.”  
431.—Sec. 89. Add the following reference :—“*See also Rev. Stat. c. 111, s. 49.*”  
476.—Sec. 55. Add the following reference :—“33 V. c. 18, s. 7.”  
537.—Sec. 7. Add the following reference :—“*See also Rev. Stat. c. 178, ss. 2, 5 and 6.*”  
574.—Sec. 147. Add reference to C. S. U. C. c. 118, s. 3 at end of the section.  
582.—For the heading “Schedule of Forms” read “Schedules of Forms.”  
650.—At the end of Sec. 192 add reference to 40 V. c. 8, s. 21.  
774.—At the end of section 1 add the following reference :—“*See also Rev. Stat. c. 108, s. 23, as to actions to recover money secured by mortgage.*”  
948.—Sec. 4. Instead of the reference to 32 V. c. 33, s. 2, read “32 V. c. 33, s. 3.”  
1085.—At the end of Sec. 82 add the following reference :—“*See also Rev. Stat. c. 146, s. 70*”; and at the end of Sec. 83, the following :—“*See also Rev. Stat. c. 146, s. 71.*”  
1094.—At the end of Schedule “B” add the following reference :—“40 V. c. 7, *Sched. A* (131).”  
1696.—Sec. 373. Instead of the reference to 40 V. c. 7, *Sched. A* (177), read “40 V. c. 7, *Sched. A* (176).”  
1717.—Sec. 454 (2). Instead of reference to Rev. Stat. c. 188, s. 2, read “*See Rev. Stat. c. 188, ss. 2 and 12.*”  
1775.—Sec. 559 and 560. Dele the ) in the reference after “s. 31.”  
1800.—Dele reference to 40 V. c. 8, s. 54 at the end of Sec. 36.  
1835.—Sec. 45. Instead of the reference to 39 V. c. 33, s. 1 (3), read “40 V. c. 28, s. 1.”  
1876.—Instead of the first reference at the end of the Schedule “B,” read “37 V. c. 19, ss. 12 and 20.”  
2105.—Sec. 210. Instead of the reference to 40 V. c. 16, s. 17 (6), read “40 V. c. 16, s. 17 (5) and (6).”





# THE REVISED STATUTES OF ONTARIO.

---

## TABLE OF CONTENTS.

---

	PAGE.
The British North America Act, 1867.....	xiii

---

Ontario Act, 40 V. c. 6, respecting the Revised Statutes.....	
Proclamation respecting the Revised Statutes.. ...	lvii

---

### TITLE I.

#### PRELIMINARY.

##### CHAPTER.

1.—Form and Interpretation of the Statutes .....	1
2.—Printing and Distribution of the Statutes.....	10

---

### TITLE II.

#### TERRITORIAL DIVISION.

3.—Boundary between Ontario and Quebec .....	12
4.—Northerly and Westerly Boundaries of Ontario .....	14
5.—Territorial Division of the Province into Counties and Districts.....	16
6.—Provisional County of Haliburton .....	36
7.—Territorial Districts of Muskoka, Parry Sound, and Thunder Bay ....	42

---

### TITLE III.

#### CONSTITUTION, LEGISLATION, &C.

8.—Representation in the Legislative Assembly .....	50
9.—Voters' Lists .....	65
10.—Elections and Prevention of Corrupt Practices.....	89
11.—Controverted Elections.. .....	160
12.—The Legislative Assembly.....	182

## TITLE IV.

## EXECUTIVE GOVERNMENT AND PUBLIC OFFICERS.

CHAPTER.	PAGE.
13.—The Lieutenant-Governor and his Deputies .....	200
14.—Executive Council .....	201
15.—Public Officers .....	202
16.—Sheriffs .....	212
17.—Inquiries concerning Public Matters .....	225
18.—Publication of Official Notices .....	226

## TITLE V.

## PUBLIC DEPARTMENTS, REVENUE AND PROPERTY.

1. *Revenue and Finance.*

19.—Consolidated Revenue Fund .....	228
20.—Revenue, Collection, &c., of .....	229
21.—Law Stamps .....	239
22.—Land Tax, Algoma .....	244

2. *Public Lands.*

23.—Public Lands, sale and management of .....	249
24.—Free Grants and Homesteads to Settlers .....	261
25.—Heir and Devisee Commission .....	267
26.—Public Lands, sale and management of Timber on .....	275
27.—Trespasses to Public Lands .....	281
28.—Clergy Reserves .....	287
29.—Mining .....	290

3. *Public Works.*

30.—Public Works Department .....	300
31.—Riots near Public Works .....	316
32.—Sale of Intoxicating Liquors near Public Works .....	321

4. *Drainage Works.*

33.—Expenditure of Public Money for Drainage ..	326
34.—Municipal Drainage Aid Act .....	339

5. *Agriculture and Arts.*

35.—Agriculture and Arts Act .....	343
------------------------------------	-----

6. *Statistics.*

36.—Registration of Births, &c. ....	376
--------------------------------------	-----



## TITLE VI.

## ADMINISTRATION OF JUSTICE.

1. THE SUPREME COURT AND EXCHEQUER COURT OF CANADA.	
CHAPTER.	PAGE.
37.—The Supreme Court and Exchequer Court of Canada .....	387
2. CONSTITUTION OF THE PROVINCIAL COURTS.	
38.—Court of Appeal .....	388
39.—Superior Courts of Law .....	401
40.—Court of Chancery .....	411
41.—Courts of Assize and Nisi Prius .....	435
42.—County Judges and the Local Courts .....	440
43.—County Courts .....	448
44.—Courts of General Sessions of the Peace .....	457
45.—County Judges' Criminal Courts .....	460
46.—Surrogate Courts .....	461
47.—Division Courts .....	482
3. JURORS AND JURIES.	
48.—Jurors and Juries .....	533
4. PROCEDURE IN CIVIL MATTERS.	
49.—Administration of Justice Act .....	594
50.—Common Law Procedure Act .....	608
51.—Ejectment .....	702
52.—Mandamus and Injunction .....	724
53.—Replevin .....	731
54.—Interpleader .....	741
55.—Dower .....	747
56.—Slander and Libel .....	758
57.—Seduction .....	759
58.—Procedure in Crown Suits .....	760
59.—Petitions of Right .....	763
60.—Administration of Estates of Intestates by the Crown .....	770
.....	
61.—Limitation of certain Actions .....	773
62.—Witnesses and Evidence .....	776
63.—Commissioners to take Affidavits .....	790
.....	
64.—Costs of Arbitrations .....	793
65.—Costs of Distresses for Small Rents and Penalties .....	796
.....	
66.—Execution .....	800
67.—Arrest and Imprisonment for Debt .....	817

CHAPTER.	PAGE.
68.—Absconding Debtors.....	825
69.—Indigent Debtors' Act .....	835
70.—Habeas Corpus .....	840

### 5. ADMINISTRATION OF JUSTICE IN CRIMINAL MATTERS.

#### 1. Justices of the Peace.

71.—Qualification and Appointment of Justices of the Peace.....	844
72.—Police Magistrates .....	848
73.—Protection of Justices, &c., from vexatious actions .....	850
74.—Duties of Justices out of Sessions, and appeals to the General Sessions..	855
75.—Procedure in appeals from Justices to County Judge .....	858
76.—Returns of Convictions and Fines .....	865
77.—Fees of Justices .....	868

#### 2. Other Officers of Justice.

78.—County Attorneys.....	870
79.—Coroners .....	875
80.—Commissioners to take recognizances.....	878
81.—Commissioners of Police .....	880
82.—Constables .....	881
83.—Special Constables.....	884

#### 3. Expenses of Administration of Justice.

84.—Fees of Counsel and Officers of Justice.....	890
85.—Expenditure of County Funds .....	899
86.—Expenses of Administration of Justice.....	902
87.—Payment of Crown Witnesses.....	909
88.—Estreats.. ..	912
89.—Appropriation of Fines.....	917

### 6. IN UNORGANIZED TRACTS.

90.—Administration of Justice in unorganized Tracts.....	918
--	-----

### 7. IN THE VICINITY OF NIAGARA FALLS.

91.—Administration of Justice in the vicinity of Niagara Falls.....	933
---	-----

## TITLE VII.

### LAW OF PROPERTY.

#### 1. In General.

92.—Law of England to govern .....	936
93.—Crown Debtors .....	937
94.—Escheats and Forfeitures.....	938

CHAPTER.	PAGE.
95.—Law of Property Amendment Act.....	940
96.—Property in Swarms of Bees .....	945

2. *Real Property.*

97.—Rights of Aliens in Real Property .....	946
98.—Transfer of Real Property .....	947
99.—Mortgages of Real Property .....	951
100.—Assurances of Estates Tail.....	953
101.—Partition and Sale of Real Estates.....	965
102.—Short forms of Conveyances.....	982
103.—     "     "     Leases .....	987
104.—     "     "     Mortgages .....	990

3. *Intestate Succession.*

105.—Descent of Real Estate... ..	1000
-----------------------------------	------

4. *Wills and Executors.*

106.—Wills .....	1011
107.—Trustees and Executors .....	1021

5. *Confirmation and Evidence of Title.*

108.—Limitations of Actions in respect to Real Estate.....	1033
109.—Evidence between Vendor and Purchaser, and Simplification of Titles... ..	1048
110.—Quieting Titles to Real Estate .....	1050
111.—Registration of Instruments relating to Land .....	1063

---

TITLE VIII.

PROPERTY IN WATERS AND STREAMS.

112.—Ferries .....	1100
113.—Mills and Mill dams.....	1103
114.—Water Privileges .....	1107
115.—Rivers and Streams .....	1112

---

TITLE IX.

MERCANTILE LAW.

116.—Mercantile Amendment Act ... ..	1115
117.—Written Promises.....	1121
118.—Fraudulent Preference of creditors .....	1124
119.—Chattel mortgages and sales of personal property... ..	1126
120.—Mechanics' liens.....	1133
121.—Agents for sale, &c., of goods.....	1140



CHAPTER.	PAGE.
122.—Limited Partnerships .....	1144
123.—Registration of Partnerships .....	1149

## TITLE X.

### LAWS AFFECTING SPECIAL CLASSES OF PERSONS.

#### 1. *Husband and Wife.*

124.—Solemnization of Marriage .....	1156
125.—Separate Rights of Property of Married Women .....	1163
126.—Dower .....	1168
127.—Conveyance of Real Estate by Married Women.....	1172
128.—Compensation to Families of Persons killed by Accident and in Duels .....	1175
129.—Wives and Children of Persons insuring their lives .....	1177

#### 2. *Parent and Child.*

130.—Custody of Children.....	1181
131.—Support of Illegitimate Children .....	1183

#### 3. *Guardian and Ward.*

132.—Guardians of Infants.....	1184
--------------------------------	------

#### 4. *Master and Servant.*

133.—Master and Servant .....	1188
134.—Adjustment of Disputes between Masters and Workmen.....	1192
135.—Apprentices and Minors .....	1198

#### 5. *Landlord and Tenant.*

136.—Law of Landlord and Tenant .....	1204
137.—Overholding Tenants.....	1209

#### 6. *Profession of the Law.*

138.—Law Society of Upper Canada .....	1214
139.—Barristers-at-Law .....	1223
140.—Attorneys-at-Law .....	1226
141.—Notaries Public .....	1242

#### 7. *Medical Profession.*

142.—Medicine and Surgery .....	1243
143.—Study of Anatomy .....	1258
144.—Dentistry .....	1261
145.—Pharmacy .....	1266

#### 8. *Land Surveyors.*

146.—Land Surveyors and the Survey of Land .....	1274
--	------

#### 9. *Miscellaneous.*

147.—Rights and Liabilities of Innkeepers .....	1295
148.—Pawnbrokers and Pawnbroking .....	1297

## TITLE XI.

## COMPANIES AND CORPORATIONS.

CHAPTER.	PAGE.
1. <i>Companies for Trade, Manufactures, &amp;c.</i>	
149.—Joint Stock Companies General Clauses Consolidation Act.....	1310
150.—Incorporation of Joint Stock Companies by Letters Patent.....	1320
151.—Telegraph Companies .....	1338
152.—Joint Stock Road Companies .....	1341
153.—Joint Stock Companies to construct Works to facilitate the Transmis- sion of Timber down Rivers and Streams .....	1380
154.—Joint Stock Companies for construction of Piers, Wharves, Dry Docks, and Harbours .....	1396
155.—Joint Stock Companies for erection of Exhibition Buildings.....	1403
156.—Mining Companies.....	1407
157.—Joint Stock Companies for supplying Cities, Towns, and Villages with Gas and Water.....	1409
158.—Co-operative Associations.....	1426
159.—Protection of Butter and Cheese Manufacturers .....	1432
2. <i>Insurance Companies.</i>	
160.—Insurance Companies .....	1434
161.—Mutual Fire Insurance Companies in Ontario.....	1448
162.—Uniform Conditions in Policies of Fire Insurance.....	1463
3. <i>Building and Loan Societies.</i>	
163.—Investment of Money in Ontario by Companies out of the Province..	1468
164.—Building Societies .....	1470
4. <i>Railway Companies.</i>	
165.—General Railway Act.....	1490
166.—Aid to Railways.....	1544
5. <i>Miscellaneous Associations.</i>	
167.—Benevolent, Provident, and other Societies.....	1556
168.—Library Associations and Mechanics' Institutes .....	1564
169.—Immigration Aid Societies .....	1568
170.—Cemetery Companies .....	1574
171.—Conveyances to Trustees for Burial Places .....	1580
6. <i>Changing the Names of Companies.</i>	
172.—Changing the Names of Incorporated Companies.....	1581
6. <i>Security by Officers of Companies and Corporations.</i>	
173.—Incorporated Companies as Sureties for Officers of certain Corpora- tions .....	1582

## TITLE XII.

## MUNICIPAL MATTERS.

CHAPTER.	PAGE.
<i>1. Municipal Institutions Generally.</i>	
174.—The Municipal Act .....	1585
175.—Municipal Institutions in Algoma, Muskoka, Nipissing, Parry Sound and Thunder Bay .....	1794
<i>2. Miscellaneous Municipal Matters.</i>	
176.—To provide for the Registration of Debentures .....	1803
177.—Calling and Holding of Public Meetings .....	1809
178.—Exemption of Firemen from certain Duties. ....	1816
179.—To provide for the support of Destitute Insane Persons .....	1818
<i>3. Assessment of Property.</i>	
180.—The Assessment Act .....	1819
<i>4. Sale of Intoxicating Liquors.</i>	
181.—Licensing for the Sale of Fermented or Spirituous Liquors .....	1880
182.—By-law for Prohibiting the Sale of Liquors .....	1924
<i>5. Highways.</i>	
183.—Travelling on the Highway .....	1943
184.—Exemptions from Toll .....	1945
185.—Double tracks in Snow Roads .....	1947
186.—Use of Traction Engines on Highways .....	1949
187.—Planting Trees on Highways .....	1952
188.—Destruction of Canada Thistles .....	1954
<i>6. Public Morals.</i>	
189.—Observance of the Lord's Day .....	1957
<i>7. Public Health.</i>	
190.—Public Health .....	1961
191.—Vaccination and Inoculation .....	1969
<i>8. Protection of the Person.</i>	
192.—Egress from Public Buildings .....	1976
193.—To Prevent Accidents from Threshing Machines .....	1977
<i>9. Protection of Property.</i>	
194.—Protection of Sheep and Tax on Dogs .....	1979
195.—Pounds and Pound Keepers .....	1984
196.—Investigation of Accidents by Fire ..	1989
197.—Filling up Abandoned Oil Wells .....	1992

CHAPTER.	PAGE.
198.—Line Fences.....	1993
199.—Ditching Water Courses .....	2000

10. *Protection of Game, &c.*

200.—Game and Fur-bearing Animals .....	2006
201.—Insectivorous Birds .....	2009
202.—Destruction of Wolves .....	2011

---

TITLE XIII.

EDUCATION.

203.—Education Department and Minister .....	2013
204.—Public Schools .....	2027
205.—High Schools and Collegiate Institutes .....	2116
206.—Separate Schools .....	2137
207.—Conveyances to Trustees for School purposes .....	2146
208.—Upper Canada College .....	2147
209.—University College .....	2149
210.—University of Toronto .....	2153
211.—Income and Property of University of Toronto, University College, and Upper Canada College .....	2169
212.—School of Practical Science .....	2175
213.—Industrial Schools.....	2178

---

TITLE XIV.

RELIGIOUS MATTERS.

214.—Tithes .....	2184
215.—Rectories.....	2184
216.—Property of Religious Institutions .....	2186

---

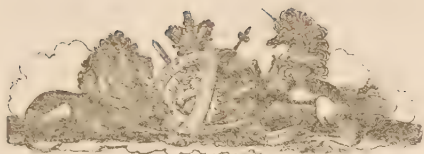
TITLE XV.

PRISONS AND PUBLIC CHARITIES.

217.—Central Prison ..	2192
218.—Reformatory Prison .....	2201
219.—Use of Spirituous Liquors in Gaols and Prisons.....	2203
220.—Lunatic Asylums and the Custody of Insane Persons.....	2205
221.—Private Lunatic Asylums.....	2224



CHAPTER.	PAGE.
222.—Institutions for the Deaf, Dumb and Blind.. . . .	2255
223.—Public Aid to Charitable Institutions . . . . .	2257
224.—Inspection of Prisons and Asylums. . . . .	2262
<hr/>	
Schedule A, shewing Acts repealed. . . . .	2271
Appendix A.—List of Acts of the Provinces of Canada and Ontario since 1859	2395
Appendix B.—Acts and parts of Acts Consolidated. . . . .	2350
Appendix C.—Acts and parts of Acts not Consolidated. . . . .	2454
<hr/>	
Note as to the different Statute Revisions of the Provinces of Upper Canada, Canada and Ontario. . . . .	2465



IMPERIAL ACT RELATING TO THE CONSTITUTION OF THE  
DOMINION OF CANADA, AND OF THE VARIOUS PRO-  
VINCES THEREIN COMPRISED.

IMP. ACT 30-31 VICT. c. 3.\*

An Act for the Union of Canada, Nova Scotia, and  
New Brunswick, and the Government thereof; and  
for Purposes connected therewith.

[29th March, 1867.]

**W**HEREAS the Provinces of Canada, Nova Scotia, and  
New Brunswick, have expressed their desire to be  
federally united into one Dominion under the Crown of the  
United Kingdom of Great Britain and Ireland, with a Consti-  
tution similar in principle to that of the United Kingdom :

And whereas such a Union would conduce to the welfare of  
the Provinces and promote the interests of the British Empire :

And whereas on the establishment of the Union by autho-  
rity of Parliament it is expedient, not only that the Constitution  
of the Legislative Authority in the Dominion be provided for,  
but also that the nature of the Executive Government therein  
be declared :

And whereas it is expedient that provision be made for the  
eventual admission into the Union of other parts of British  
North America :

Be it therefore enacted and declared by the Queen's most  
Excellent Majesty, by and with the advice and consent of the  
Lords Spiritual and Temporal, and Commons, in this present  
Parliament assembled, and by the authority of the same, as  
follows ;

I.—PRELIMINARY.

1. This Act may be cited as "The British North America Short title.  
Act, 1867."

---

\* This Act has been amended by the Imperial Acts, 34 & 35 V. c. 28., and 38 & 39  
V. c. 36, but the amendments do not specially affect Ontario.

Application of provisions referring to the Queen.

2. The provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty. Kings and Queens of the United Kingdom of Great Britain and Ireland.

## II.—UNION.

Declaration of Union.

3. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that on and after a day therein appointed, not being more than six months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be one Dominion under the name of Canada; and on and after that day those three Provinces shall form and be one Dominion under that name accordingly.

Construction of subsequent provisions of Act.

4. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect in the Queen's Proclamation; and in the same provisions, unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.

Four Provinces.

5. Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.

[See *Imp. Act 34 & 35 V., c. 28, as to the admission of other Provinces.*]

Provinces of Ontario and Quebec.

6. The parts of the Province of Canada (as it exists at the passing of this Act which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

Provinces of Nova Scotia and New Brunswick.  
Decennial census.

7. The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

8. In the general census of the population of Canada which is hereby required to be taken in the year one thousand eight hundred and seventy-one, and in every tenth year thereafter, the respective populations of the four Provinces shall be distinguished.

## III.—EXECUTIVE POWER.

Declaration of Executive Power in the Queen.

9. The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.

**10.** The provisions of this Act referring to the Governor General extend and apply to the Governor General for the time being of Canada, or other the Chief Executive Officer or Administrator, for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by whatever title he is designated.

*Application of provisions relating to Governor General.*

**11.** There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor General and sworn in as Privy Counsellors, and members thereof may be from time to time removed by the Governor General.

*Constitution of Privy Council for Canada.*

**12.** All powers, authorities, and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor General, with the advice or with the advice and consent of or in conjunction with the Queen's Privy Council for Canada, or any members thereof, or by the Governor General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

*All powers under Acts to be exercised by Governor General with advice of Privy Council or alone.*

**13.** The provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the advice of the Queen's Privy Council for Canada.

*Application of provisions relating to Governor General in Council.*

**14.** It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from time to time to appoint any person or any persons jointly or severally to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the Governor General such of the powers, authorities, and functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a Deputy or Deputies shall not

*Power of Her Majesty to authorize Governor General to appoint Deputy.*



Summons of  
first body of  
Senators.

**25.** Such persons shall be first summoned to the Senate as the Queen by warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their names shall be inserted in the Queen's Proclamation of Union.

Addition of  
Senators in  
certain cases.

**26.** If at any time on the recommendation of the Governor-General the Queen thinks fit to direct that three or six members be added to the Senate, the Governor-General may by summons to three or six qualified persons (as the case may be), representing equally the three divisions of Canada, add to the Senate accordingly.

Reduction of  
Senate to  
normal num-  
ber.

**27.** In case of such addition being at any time made the Governor-General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, until each of the three divisions of Canada is represented by twenty-four Senators and no more.

Maximum  
number of  
Senators.

**28.** The number of Senators shall not at any time exceed seventy-eight.

Tenure of place  
in Senate.

**29.** A Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

Resignation of  
place in  
Senate.

**30.** A Senator may by writing under his hand addressed to the Governor-General resign his place in the Senate, and thereupon the same shall be vacant.

Disqualifica-  
tion of  
Senators.

**31.** The place of a Senator shall become vacant in any of the following cases:—

- (1.) If for two consecutive Sessions of the Parliament he fails to give his attendance in the Senate:
- (2.) If he takes an oath or makes a declaration or acknowledgment of allegiance, obedience, or adherence to a foreign power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen, of a foreign power:
- (3.) If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter:
- (4.) If he is attainted of treason or convicted of felony or of any infamous crime:
- (5.) If he ceases to be qualified in respect of property or of residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the seat

of the Government of Canada while holding an office under that Government requiring his presence there.

**32.** When a vacancy happens in the Senate by resignation, death, or otherwise, the Governor General shall by summons to a fit and qualified person fill the vacancy,

Summons on vacancy in Senate.

**33.** If any question arises respecting the qualification of a Senator or a vacancy in the Senate the same shall be heard and determined by the Senate.

Questions as to qualifications and vacancies in Senate.

**34.** The Governor-General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead.

Appointment of Speaker of Senate.

**35.** Until the Parliament of Canada otherwise provides, the presence of at least fifteen Senators, including the Speaker, shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Quorum of Senate.

**36.** Questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

Voting in Senate.

### *The House of Commons.*

**37.** The House of Commons shall, subject to the provisions of this Act, consist of one hundred and eighty-one members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia, and fifteen for New Brunswick.

Constitution of House of Commons in Canada.

*[The number of members was increased to two hundred by the Dominion Act, 35 V. c. 13, and the number is now two hundred and six, the Province of Manitoba having four members and British Columbia and Prince Edward Island six members each, while by the Dominion Act 35 V. c. 13, the representation of Ontario was increased to eighty-eight members, that of Nova Scotia to twenty-one and that of New Brunswick to sixteen.]*

**38.** The Governor General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon and call together the House of Commons.

Summoning of House of Commons.

**39.** A Senator shall not be capable of being elected or of sitting or voting as a member of the House of Commons.

Senators not to sit in House of Commons.

**40.** Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall, for

Electoral districts of the four Provinces.

the purposes of the election of members to serve in the House of Commons, be divided into Electoral Districts as follows:—

### 1.—ONTARIO.

Ontario shall be divided into the Counties, Ridings of Counties, Cities, parts of Cities, and Towns enumerated in the first Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return one member.

[*See the Dominion Act, 35 V. c. 13.*]

### 2.—QUEBEC.

Quebec shall be divided into sixty-five Electoral Districts, composed of the sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under chapter two of the Consolidated Statutes of Canada, chapter seventy-five of the Consolidated Statutes for Lower Canada, and the Act for the Province of Canada of the twenty-third year of the Queen, chapter one, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the purposes of this Act an Electoral District entitled to return one member.

[*See the Dominion Act, 35 V. c. 13.*]

### 3.—NOVA SCOTIA.

Each of the eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return two members, and each of the other Counties one member.

[*See the Dominion Act, 35 V. c. 13.*]

### 4.—NEW BRUNSWICK.

Each of the fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District; the City of St. John shall also be a separate Electoral District. Each of those fifteen Electoral Districts shall be entitled to return one member.

[*See the Dominion Act, 35 V. c. 13.*]

Continuance  
of existing  
election laws  
until Parlia-  
ment of Cana-  
da otherwise  
provides.

**41.** Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces at the Union relative to the following matters or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or

vote as members of the House of Assembly or Legislative Assembly in the several Provinces, the voters at elections of such members, the oaths to be taken by voters, the Returning Officers, their powers and duties, the proceedings at elections, the periods during which elections may be continued, the trial of controverted elections, and proceedings incident thereto, the vacating of seats of members, and the execution of new writs in case of seats vacated otherwise than by dissolution,—shall respectively apply to elections of members to serve in the House of Commons for the same several Provinces.

Provided that, until the Parliament of Canada otherwise provides, at any election for a Member of the House of Commons for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject aged twenty-one years or upwards, being a householder, shall have a vote.

**42.** For the first election of members to serve in the House of Commons the Governor-General shall cause writs to be issued by such person, in such form, and addressed to such Returning Officers as he thinks fit. Writs for first election.

The person issuing writs under this section shall have the like powers as are possessed at the Union by the officers charged with the issuing of writs for the election of members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia, or New Brunswick; and the Returning Officers to whom writs are directed under this section shall have the like powers as are possessed at the Union by the officers charged with the returning of writs for the election of members to serve in the same respective House of Assembly or Legislative Assembly.

**43.** In case a vacancy in the representation in the House of Commons of any Electoral District happens before the meeting of the Parliament, or after the meeting of the Parliament before provision is made by the Parliament in this behalf, the provisions of the last foregoing section of this Act shall extend and apply to the issuing and returning of a writ in respect of such vacant District. As to casual vacancies.

**44.** The House of Commons on its first assembling after a general election shall proceed with all practicable speed to elect one of its members to be Speaker. As to election of Speaker of House of Commons.

**45.** In case of a vacancy happening in the office of Speaker by death, resignation or otherwise, the House of Commons shall with all practicable speed proceed to elect another of its members to be Speaker. As to filling up vacancy in office of Speaker

**46.** The Speaker shall preside at all meetings of the House of Commons. Speaker to preside.



Provision in  
case of absence  
of Speaker.

**47.** Until the Parliament of Canada otherwise provides, in case of the absence for any reason of the Speaker from the chair of the House of Commons for a period of forty-eight consecutive hours, the House may elect another of its members to act as Speaker, and the member so elected shall during the continuance of such absence of the Speaker have and execute all the powers, privileges, and duties of Speaker.

Quorum of  
House of Com-  
mons.

**48.** The presence of at least twenty members of the House of Commons shall be necessary to constitute a meeting of the House for the exercise of its powers, and for that purpose the Speaker shall be reckoned as a member.

Voting in  
House of Com-  
mons.

**49.** Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker and when the voices are equal, but not otherwise, the Speaker shall have a vote.

Duration of  
House of Com-  
mons.

**50.** Every House of Commons shall continue for five years from the day of the return of the writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer.

Decennial Re-  
adjustment of  
Representation.

**51.** On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four Provinces shall be readjusted by such authority, in such manner and from such time as the Parliament of Canada from time to time provides subject and according to the following rules:—

- (1.) Quebec shall have the fixed number of sixty-five members.
- (2.) There shall be assigned to each of the other Provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained).
- (3.) In the computation of the number of members for a Province a fractional part not exceeding one half of the whole number requisite for entitling the Province to a member shall be disregarded; but a fractional part exceeding one half of that number shall be equivalent to the whole number.
- (4.) On any such re-adjustment the number of members for a Province shall not be reduced unless the proportion which the number of the population of the Province bore to the number of the aggregate population of Canada at the then last preceding re-adjustment of

the number of members for the Province is ascertained at the then latest census to be diminished by one twentieth part or upwards.

- (5). Such re-adjustment shall not take effect until the termination of the then existing Parliament.

[See the re-adjustment under the *Dominion Act*, 35  
V. c. 13.]

**52.** The number of members of the House of Commons may be from time to time increased by the Parliament of Canada, provided the proportionate representation of the Provinces prescribed by this Act is not thereby disturbed.

Increase of  
number of  
House of Com-  
mons.

### *Money Votes ; Royal Assent.*

**53.** Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.

Appropriation  
and tax bills.

**54.** It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor-General in the Session in which such vote, resolution, address, or bill is proposed.

Recommendation  
of money  
votes.

**55.** Where a bill passed by the Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the bill for the signification of the Queen's pleasure.

Royal assent  
to bills, &c.

**56.** Where the Governor-General assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State; and if the Queen in Council within two years after the receipt thereof by the Secretary of State thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor-General, by speech or message to each of the Houses of the Parliament, or by proclamation, shall annul the Act from and after the day of such signification.

Disallowance  
by order in  
Council of Act  
assented to by  
Governor-  
General.

**57.** A bill reserved for the signification of the Queen's pleasure shall not have any force unless and until within two years

Signification  
of Queen's  
pleasure on  
bill reserved.

from the day on which it was presented to the Governor-General for the Queen's assent, the Governor-General signifies, by speech or message to each of the Houses of the Parliament or by proclamation, that it has received the assent of the Queen in Council.

An entry of every such speech, message, or proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of Canada.

#### V.—PROVINCIAL CONSTITUTIONS.

##### *Executive Power.*

**58** For each Province there shall be an officer, styled the Lieutenant-Governor, appointed by the Governor-General in Council by instrument under the Great Seal of Canada.

Appointment  
of Lieutenant-  
Governors of  
Provinces.

**59.** A Lieutenant-Governor shall hold office during the pleasure of the Governor-General; but any Lieutenant-Governor appointed after the commencement of the first Session of the Parliament of Canada shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting, and if not then within one week after the commencement of the next Session of the Parliament.

Tenure of office  
of Lieutenant-  
Governor.

**60.** The salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada.

Salaries of  
Lieutenant-  
Governors.

**61.** Every Lieutenant-Governor, shall, before assuming the duties of his office, make and subscribe before the Governor-General or some person authorized by him, oaths of allegiance and office similar to those taken by the Governor-General.

Oaths, &c.  
of Lieutenant-  
Governor.

**62.** The provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the time being of each Province or other the chief executive officer or administrator for the time being carrying on the government of the Province, by whatever title he is designated.

Application of  
provisions re-  
ferring to  
Lieutenant-  
Governor.

**63.** The Executive Council of Ontario and of Quebec shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit, and in the first instance of the following officers, namely:—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agri-

Appointment  
of executive  
officers for On-  
tario and Que-  
bec.

culture and Public Works, within Quebec, the Speaker of the Legislative Council and the Solicitor-General.

[See now as to Ontario *Rev. Stat. c. 14.*]

**64.** The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the authority of this Act.

Executive Government of Nova Scotia and New Brunswick.

**65.** All powers, authorities, and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the advice or with the advice and consent of or in conjunction with the respective Executive Councils, or any members thereof, or by the Lieutenant-Governor individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be abolished or altered by the respective Legislatures of Ontario and Quebec.

Powers to be exercised by Lieutenant Governor of Ontario or Quebec with advice or alone.

**66.** The provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the advice of the Executive Council thereof.

Application of provisions referring to Lieutenant Governor in Council.

**67.** The Governor-General in Council may from time to time appoint an administrator to execute the office and functions of Lieutenant Governor during his absence, illness, or other inability.

Administration in absence &c. of Lieutenant Governor.

**68.** Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

Seats of Provincial Governments.

*Legislative Power.*

1.—ONTARIO.

Legislature  
for Ontario.

**69.** There shall be a Legislature for Ontario consisting of the Lieutenant-Governor and of one House, styled the Legislative Assembly of Ontario.

Electoral  
districts.

**70.** The Legislative Assembly of Ontario shall be composed of eighty-two members, to be elected to represent the eighty-two Electoral Districts set forth in the first Schedule to this Act.

[*The number of members was by the Ontario Act, 38 V. c. 2, increased to eighty-eight. See Rev. Stat. c. 8.*]

2.—QUEBEC.

Legislature  
for Quebec.

**71.** There shall be a Legislature for Quebec consisting of the Lieutenant-Governor and of two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

Constitution  
of Legislative  
Council.

**72.** The Legislative Council of Quebec shall be composed of twenty-four members, to be appointed by the Lieutenant-Governor in the Queen's name, by instrument under the Great Seal of Quebec, one being appointed to represent each of the twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding office for the term of his life, unless the Legislature of Quebec otherwise provides under the provisions of this Act.

Qualification  
of Legislative  
Councillors.

**73.** The qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

Resignation,  
Disqualification,  
&c.

**74.** The place of a Legislative Councillor of Quebec shall become vacant in the cases *mutatis mutandis*, in which the place of Senator becomes vacant.

Vacancies.

**75.** When a vacancy happens in the Legislative Council of Quebec, by resignation, death, or otherwise, the Lieutenant-Governor, in the Queen's name by instrument under the Great Seal of Quebec, shall appoint a fit and qualified person to fill the vacancy.

Questions as  
to Vacancies,  
&c.

**76.** If any question arises respecting the qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec the same shall be heard and determined by the Legislative Council.

Speaker of  
Legislative  
Council.

**77.** The Lieutenant-Governor may from time to time, by instrument under the Great Seal of Quebec, appoint a member



of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead.

**78.** Until the Legislature of Quebec otherwise provides, the presence of at least ten members of the Legislative Council, including the Speaker, shall be necessary to constitute a meeting for the exercise of its powers.

Quorum of  
Legislative  
Council.

**79.** Questions arising in the Legislative Council of Quebec shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

Voting in  
Legislative  
Council.

**80.** The Legislative Assembly of Quebec shall be composed of sixty-five members, to be elected to represent the sixty-five electoral divisions or districts of Lower Canada in this Act referred to, subject to alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant-Governor of Quebec for assent any bill for altering the limits of any of the Electoral Divisions or Districts mentioned in the second Schedule to this Act, unless the second and third readings of such bill have been passed in the Legislative Assembly with the concurrence of the majority of the members representing all those Electoral Divisions or Districts, and the assent shall not be given to such bill unless an address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed.

Constitution  
of Legislative  
Assembly of  
Quebec.

### 3.—ONTARIO AND QUEBEC.

**81.** The Legislatures of Ontario and Quebec respectively shall be called together not later than six months after the Union.

First Session  
of Legisla-  
tures.

**82.** The Lieutenant-Governor of Ontario and of Quebec shall from time to time, in the Queen's name, by instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Summoning of  
Legislative  
Assemblies.

**83.** Until the Legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec any office, commission, or employment permanent or temporary, at the nomination of the Lieutenant-Governor, to which an annual salary, or any fee, allowance, emolument, or profit of any kind or amount whatever from the Province is attached, shall not be eligible as a member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this section shall make ineligible any person being a member of the Executive Council of the respective Province, or holding any of the following offices, that is to say, the offices of Attorney General, Secretary and Registrar of the Province,

Restriction on  
election of  
holders of  
offices.

Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor-General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such office.

*[Acts have since been passed with the view of further securing the independence of the Legislative Assembly of Ontario. See Rev. Stat. c 12. ss. 6 to 11.]*

Continuance  
of existing  
election laws.

**84.** Until the Legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the Union are in force in those Provinces respectively, relative to the following matters, or any of them, namely,—the qualification and disqualifications of persons to be elected or to sit or vote as members of the Assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the Returning Officers, their powers and duties, the proceedings at elections, the periods during which such elections may be continued, and the trial of controverted elections and the proceedings incident thereto, the vacating of the seats of members and the issuing and execution of new writs in case of seats vacated otherwise than by dissolution, shall respectively apply to elections of members to serve in the respective Legislative Assemblies of Ontario and Quebec.

*[See now as to Ontario Rev. Stat., cc. 10 and 11.]*

Provided that until the Legislature of Ontario otherwise provides, at any election for a member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged twenty-one years or upwards, being a householder, shall have a vote.

*[See now Rev. Stat., c. 10 s. 7.]*

Duration of  
Legislative  
Assemblies.

**85.** Every Legislative Assembly of Ontario and every Legislature of Quebec shall continue for four years from the day of the return of the writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.

*[See also Rev. Stat., c 12. s. 3.]*

Yearly Session  
of Legislature.

**86.** There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in each Province in one Session and its first sitting in the next Session.

*[See Rev. Stat., c. 12 s. 4.]*

**87.** The following provisions of this Act respecting the Speaker, House of Commons of Canada shall extend and apply to the Quorum, &c. Legislative Assemblies of Ontario and Quebec, that is to say,—the provisions relating to the election of a Speaker originally and on vacancies, the duties of the Speaker, the absence of the Speaker, the quorum, and the mode of voting, as if those provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

[See sections 44, 45, 46, 47, 48 and 49 of this Act, and *Rev. Stat.*, c. 12, ss. 26, 27, 29, 30, 53 and 54].

#### 4.—NOVA SCOTIA AND NEW BRUNSWICK.

**88.** The constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

#### 5.—ONTARIO, QUEBEC, AND NOVA SCOTIA.

**89.** Each of the Lieutenant-Governors of Ontario, Quebec, and Nova Scotia shall cause writs to be issued for the first election of members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time and address to such Returning Officer as the Governor General directs, and so that the first election of member of Assembly for any Electoral District or any subdivision thereof shall be held at the same time and at the same places as the election for a member to serve in the House of Commons of Canada for that Electoral District.

#### 6.—THE FOUR PROVINCES.

**90.** The following provisions of this Act respecting the Parliament of Canada, namely,—the provisions relating to appropriation and tax bills, the recommendation of money votes, the assent to bills, the disallowance of Acts, and the signification of pleasure on bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those provisions were here re-enacted and made applicable in terms to the respective Provinces and the Legislatures thereof, with the substitution of the Lieutenant-Governor of the Province for the Governor-General, of the Governor-General for the Queen and for a Secretary of State, of one year for two years, and of the Province for Canada.

## VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

*Powers of the Parliament.*

Legislative  
authority of  
Parliament of  
Canada.

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

1. The Public Debt and Property.
2. The regulation of Trade and Commerce.
3. The raising of money by any mode or system of Taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the establishment and maintenance of Marine Hospitals.
12. Sea coast and inland Fisheries.
13. Ferries between a Province and any British or Foreign country or between two Provinces.
14. Currency and Coinage.
15. Banking, incorporation of banks, and the issue of paper money.

16. Savings' Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and Insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians, and lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

*Exclusive Powers of Provincial Legislatures.*

**92.** In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say,—

Subjects of exclusive Provincial Legislation.

1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.



2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial purposes.
3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of Provincial offices and the appointment and payment of Provincial officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the timber and wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, local, or municipal purposes.
10. Local Works and Undertakings other than such as are of the following classes,—
  - a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province :
  - b. Lines of Steam Ships between the Province and any British or Foreign Country :
  - c. Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.
11. The Incorporation of Companies with Provincial objects.
12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
16. Generally all matters of a merely local or private nature in the Province.

*Education.*

**93.** In and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following provisions :— Legislation  
respecting  
education.

- (1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union.
- (2.) All the powers, privileges, and duties at the Union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec :
- (3.) Where in any Province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any Act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education.
- (4.) In case any such Provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then and in every such case, and

as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor-General in Council under this section.

*Uniformity of Laws in Ontario, Nova Scotia and New Brunswick.*

Legislation for uniformity of Laws in three Provinces.

**94.** Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and of the procedure of all or any of the Courts in those three Provinces; and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any Province unless and until it is adopted and enacted as law by the Legislature thereof.

*Agriculture and Immigration.*

Concurrent powers of Legislation respecting Agriculture, &c.

**95.** In each Province the Legislature may make laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

VII.—JUDICATURE.

Appointment of Judges.

**96.** The Governor-General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Selection of Judges in Ontario, &c.

**97.** Until the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and the procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor-General shall be selected from the respective Bars of those Provinces.

Selection of Judges in Quebec.

**98.** The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

**99.** The Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons. Tenure of office of Judges of Superior Courts.

**100.** The salaries, allowances, and pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick,) and of the Admiralty Courts in cases where the Judges thereof are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada. Salaries, &c., of Judges.

**101.** The Parliament of Canada may, notwithstanding anything in this Act, from time to time, provide for the constitution, maintenance, and organization of a general Court of Appeal for Canada, and for the establishment of any additional Courts for the better administration of the Laws of Canada. General Court of Appeal, &c.

#### VIII.—REVENUES; DEBTS; ASSETS; TAXATION.

**102.** All duties and revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick before and at the Union had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this Act provided. Creation of Consolidated Revenue Fund.

**103.** The Consolidated Revenue Fund of Canada shall be permanently charged with the costs, charges, and expenses incident to the collection, management, and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the Governor-General in Council until the Parliament otherwise provides. Expenses of collection, &c.

**104.** The annual interest of the public debts of the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the second charge on the Consolidated Revenue Fund of Canada. Interest of Provincial public debts.

**105.** Unless altered by the Parliament of Canada, the salary of the Governor-General shall be ten thousand pounds sterling money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the third charge thereon. Salary of Governor-General.

**106.** Subject to the several payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall Appropriation from time to time.

be appropriated by the Parliament of Canada for the public service.

Transfer of  
stocks, &c.

**107.** All stocks, cash, banker's balances, and securities for money belonging to each Province at the time of the Union, except as in this Act mentioned, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the Provinces at the Union.

Transfer of  
property in  
schedule.

**108.** The public works and property of each Province, enumerated in the third Schedule to this Act, shall be the property of Canada.

Property in  
lands, mines,  
&c.

**109.** All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same.

Assets connec-  
ted with Pro-  
vincial debts.

**110.** All assets connected with such portions of the public debt of each Province as are assumed by that Province shall belong to that Province.

Canada to be  
liable for  
Provincial  
debts.

**111.** Canada shall be liable for the debts and liabilities of each Province existing at the Union.

Debts of On-  
tario and  
Quebec.

**112.** Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the debt of the Province of Canada exceeds at the Union sixty-two million five hundred thousand dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Assets of  
Ontario and  
Quebec.

**113.** The assets enumerated in the fourth Schedule to this Act belonging at the Union to the Province of Canada shall be the property of Ontario and Quebec conjointly.

Debt of Nova  
Scotia.

**114.** Nova Scotia shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union eight million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Debt of New  
Brunswick.

**115.** New Brunswick shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union seven million dollars, and shall be charged with interest at the rate of five per centum per annum.

Payment of  
interest to  
Nova Scotia

**116.** In case the public debt of Nova Scotia and New Brunswick do not at the Union amount to eight million and



seven million dollars respectively, they shall respectively receive by half-yearly payments in advance from the Government of Canada interest at five per centum per annum on the difference between the actual amounts of their respective debts and such stipulated amounts. and New Brunswick.

**117.** The several Provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country. Provincial public property.

**118.** The following sums shall be paid yearly by Canada to the several Provinces for the support of their Governments and Legislatures: Grants to Provinces.

	Dollars.					
Ontario	-	-	-	-	-	Eighty thousand.
Quebec	-	-	-	-	-	Seventy thousand.
Nova Scotia	-	-	-	-	-	Sixty thousand.
New Brunswick	-	-	-	-	-	Fifty thousand.

Two hundred and sixty thousand; and an annual grant in aid of each Province shall be made, equal to eighty cents per head of the population as ascertained by the Census of one thousand eight hundred and sixty-one, and in the case of Nova Scotia and New Brunswick, by each subsequent decennial Census until the population of each of those two Provinces amounts to four hundred thousand souls, at which rate such grant shall thereafter remain. Such grants shall be in full settlement of all future demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such grants, as against any Province, all sums chargeable as interest on the Public Debt of that Province in excess of the several amounts stipulated in this Act.

**119.** New Brunswick shall receive by half-yearly payments in advance from Canada for the period of ten years from the Union an additional allowance of sixty-three thousand dollars per annum; but as long as the Public Debt of that Province remains under seven million dollars, a deduction equal to the interest at five per centum per annum on such deficiency shall be made from that allowance of sixty-three thousand dollars. Further grant to New Brunswick.

**120.** All payments to be made under this Act, or in discharge of liabilities created under any Act of the Province of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such form and manner as may from time to time be ordered by the Governor-General in Council. Form of payments.

Canadian manufactures, &c.

**121.** All articles of the growth, produce, or manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Continuance of Customs and Excise Laws.

**122.** The Customs and Excise Laws of each Province shall, subject to the provisions of this Act, continue in force until altered by the Parliament of Canada.

Exportation and Importation as between two Provinces.

**123.** Where Customs duties are, at the Union, leviable on any goods, wares, or merchandises in any two Provinces, those goods, wares, and merchandises may, from and after the Union, be imported from one of those Provinces into the other of them on proof of payment of the Customs duty leviable thereon in the Province of exportation, and on payment of such further amount (if any) of Customs duty as is leviable thereon in the Province of importation.

Lumber dues in New Brunswick.

**124.** Nothing in this Act shall affect the right of New Brunswick to levy the lumber dues provided in chapter fifteen of title three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the amount of such dues; but the lumber of any of the Provinces other than New Brunswick shall not be subjected to such dues.

Exemption of public lands, &c.

**125.** No lands or property belonging to Canada or any Province shall be liable to taxation.

Provincial Consolidated Revenue Fund.

**126.** Such portions of the duties and revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union power of appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this Act, shall in each Province form one Consolidated Revenue Fund to be appropriated for the public service of the Province.

## IX.—MISCELLANEOUS PROVISIONS.

### *General.*

As to Legislative Councillors of Provinces becoming Senators.

**127.** If any person being at the passing of this Act a Member of the Legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a place in the Senate is offered, does not within thirty days thereafter, by writing under his hand addressed to the Governor-General of the Province of Canada or to the Lieutenant-Governor of Nova Scotia or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any person who, being at the passing of this Act a member of the Legislative

Council of Nova Scotia or New Brunswick, accepts a place in the Senate shall thereby vacate his seat in such Legislative Council.

**128.** Every member of the Senate or House of Commons of Canada shall before taking his seat therein take and subscribe before the Governor-General or some person authorized by him, and every member of a Legislative Council or Legislative Assembly of any Province shall before taking his seat therein take and subscribe before the Lieutenant-Governor of the Province or some person authorized by him, the oath of allegiance contained in the fifth Schedule to this Act; and every member of the Senate of Canada and every member of the Legislative Council of Quebec shall also, before taking his seat therein, take and subscribe before the Governor-General, or some person authorized by him, the declaration of qualification contained in the same Schedule.

**129.** Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament or of that Legislature under this Act.

**130.** Until the Parliament of Canada otherwise provides, all officers of the several Provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be officers of Canada, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities, and penalties as if the Union had not been made.

**131.** Until the Parliament of Canada otherwise provides, the Governor-General in Council may from time to time appoint such officers as the Governor-General in Council deems necessary or proper for the effectual execution of this Act.

**132.** The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

Use of English  
and French  
languages.

**133.** Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

*Ontario and Quebec.*

Appointment  
of executive  
officers for On-  
tario and  
Quebec.

**134.** Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint under the Great Seal of the Province the following officers, to hold office during pleasure, that is to say—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the case of Quebec the Solicitor-General; and may, by order of the Lieutenant-Governor in Council, from time to time prescribe the duties of those officers and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof; and may also appoint other and additional officers to hold office during pleasure, and may from time to time prescribe the duties of those officers, and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof.

Powers, duties,  
&c. of  
executive officers.

**135.** Until the Legislature of Ontario or Quebec otherwise provides, all rights, powers, duties, functions, responsibilities, or authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver-General, by any law, statute or ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed by the Lieutenant-Governor for the discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the duties and functions of the office of Minister of Agriculture at the passing of this Act imposed by the law of the Province of Canada, as well as those of the Commissioner of Public Works.

Great Seal.

**136.** Until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be



the same, or of the same design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

**137.** The words "and from thence to the end of the then next ensuing Session of the Legislature," or words to the same effect, used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada, if the subject matter of the Act is within the powers of the same, as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively, if the subject matter of the Act is within the powers of the same as defined by this Act.

Construction  
of temporary  
Acts.

**138.** From and after the Union, the use of the words "Upper Canada" instead of "Ontario," or "Lower Canada" instead of "Quebec," in any deed, writ, process, pleading, document, matter, or thing, shall not invalidate the same.

As to errors in  
names.

**139.** Any Proclamation under the Great Seal of the Province of Canada issued before the Union to take effect at a time which is subsequent to the Union, whether relating to that Province, or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed shall be and continue of like force and effect as if the Union had not been made.

As to issue o  
Proclamations  
before Union,  
to commence  
after Union.

**140.** Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada to be issued under the Great Seal of the Province of Canada, whether relating to that Province, or to Upper Canada, or to Lower Canada, and which is now issued before the Union, may be issued by the Lieutenant-Governor of Ontario or of Quebec, as its subject matter requires, under the Great Seal thereof; and from and after the issue of such Proclamation the same and the several matters and things therein proclaimed shall be and continue of the like force and effect in Ontario or Quebec as if the Union had not been made.

As to issue of  
Proclamations  
after Union.

**141.** The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec.

Penitentiary.

**142.** The division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada; and the selection of the arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec.

Arbitration  
respecting  
debts, &c.



Division of records.

**143.** The Governor-General in Council may from time to time order that such and so many of the records, books, and documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that Province; and any copy thereof or extract therefrom, duly certified by the officer having charge of the original thereof shall be admitted as evidence.

Constitution of townships in Quebec.

**144.** The Lieutenant-Governor of Quebec may from time to time, by Proclamation under the Great Seal of the Province, to take effect from a day to be appointed therein, constitute townships in those parts of the Province of Quebec in which townships are not then already constituted, and fix the metes and bounds thereof.

#### X.—INTERCOLONIAL RAILWAY.

Duty of Government and Parliament of Canada to make railway herein described.

**145.** Inasmuch as the Provinces of Canada, Nova Scotia, and New Brunswick have joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the Union of British North America, and to the assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that provision should be made for its immediate construction by the Government of Canada: Therefore, in order to give effect to that agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement within six months after the Union, of a railway connecting the River St. Lawrence with City of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed.

#### XI.—ADMISSION OF OTHER COLONIES.

Power to admit Newfoundland, &c., into the Union.

**146.** It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament in Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

As to representation of Newfoundland.

**147.** In case of the admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a

representation in the Senate of Canada of four members, and (notwithstanding anything in this Act) in case of the admission of Newfoundland the normal number of Senators shall be seventy-six and their maximum number shall be eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the third of the three divisions into which Canada is, in relation to the constitution of the Senate, divided by this Act, and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from twelve to ten members respectively, and the representation of each of those Provinces shall not be increased at any time beyond ten, except under the provisions of this Act for the appointment of three or six additional Senators under the direction of the Queen.

---

## SCHEDULES.

---

### The FIRST SCHEDULE.

---

#### *Electoral Districts of Ontario.*

[The division of Ontario into Electoral Districts has been altered by subsequent Dominion and Provincial legislation. See the Dominion Acts 35 V. c. 13, and 37 V. c. 12, for representation in the House of Commons; and Rev. Stat. c. 8, for representation in the Legislative Assembly of the Province.]

---

## A.

### EXISTING ELECTORAL DIVISIONS.

---

#### COUNTIES.

- |               |                   |
|---------------|-------------------|
| 1. Prescott.  | 6. Carleton.      |
| 2. Glengarry. | 7. Prince Edward. |
| 3. Stormont.  | 8. Halton.        |
| 4. Dundas.    | 9. Essex.         |
| 5. Russell.   |                   |

#### RIDINGS OF COUNTIES.

10. North Riding of Lanark.
11. South Riding of Lanark.
12. North Riding of Leeds and North Riding of Grenville.
13. South Riding of Leeds.
14. South Riding of Grenville.
15. East Riding of Northumberland.
16. West Riding of Northumberland (excepting therefrom the Township of South Monaghan).
17. East Riding of Durham.
18. West Riding of Durham.
19. North Riding of Ontario.

20. South Riding of Ontario.
21. East Riding of York.
22. West Riding of York.
23. North Riding of York.
24. North Riding of Wentworth.
25. South Riding of Wentworth.
26. East Riding of Elgin.
27. West Riding of Elgin.
28. North Riding of Waterloo.
29. South Riding of Waterloo.
30. North Riding of Brant.
31. South Riding of Brant.
32. North Riding of Oxford.
33. South Riding of Oxford.
34. East Riding of Middlesex.

#### CITIES, PARTS OF CITIES AND TOWNS.

35. West Toronto.
36. East Toronto.
37. Hamilton.
38. Ottawa.
39. Kingston.
40. London.
41. Town of Brockville, with the Township of Elizabethtown thereto attached.
42. Town of Niagara, with the Township of Niagara thereto attached.
43. Town of Cornwall, with the Township of Cornwall thereto attached.

### B.

#### NEW ELECTORAL DIVISIONS.

##### 44. The Provisional Judicial District of ALGOMA.

The County of BRUCE, divided into two Ridings, to be called respectively the North and South Ridings :—

45. The North Riding of Bruce to consist of the Townships of Bury, Lindsay, Eastnor, Albemarle, Amable, Arran, Bruce, Elderslie, and Saugeen, and the Village of Southampton.
46. The South Riding of Bruce to consist of the Townships of Kincardine (including the Village of Kincardine), Greenock, Brant, Huron, Kinloss, Culross, and Carrick.

The County of HURON, divided into two Ridings, to be called respectively the North and South Ridings :—

47. The North Riding to consist of the Townships of Ashfield, Wawanosh, Turnberry, Howick, Morris, Grey, Colborne, Hullett, including the Village of Clinton and McKillop.
48. The South Riding to consist of the Town of Goderich and the Township of Goderich, Tuckersmith, Stanley, Hay, Usborne, and Stephen.

The County of MIDDLESEX, divided into three Ridings, to be called respectively the North, West, and East Ridings :—

49. The North Riding to consist of the Townships of McGillivray and Biddulph, (taken from the County of Huron), and Williams East, Williams West, Adelaide, and Lobo.

50. The West Riding to consist of the Townships of Delaware, Caradoc, Metcalfe, Mosa, and Ekfrid, and the Village of Strathroy.

[The East Riding to consist of the Townships now embraced therein, and be bounded as it is at present.]

51. The County of LAMBTON to consist of the Townships of Bosanquet, Warwick, Plympton, Sarnia, Moore, Enniskillen, and Brooke, and the Town of Sarnia.

52. The County of KENT to consist of the Townships of Chatham, Dover, East Tilbury, Romney, Raleigh, and Harwich, and the Town of Chatham.

53. The County of BOTHWELL to consist of the Townships of Sombra, Dawn, and Euphemia, (taken from the County of Lambton), and the Townships of Zone, Camden, with the Gore thereof, Orford, and Howard (taken from the County of Kent).

The County of GREY divided into two Ridings to be called respectively the South and North Ridings :—

54. The South Riding to consist of the Townships of Bentinck, Glenelg, Artemesia, Osprey, Normanby, Egremont, Proton, and Melancthon.

55. The North Riding to consist of the Townships of Collingwood, Euphrasia, Holland, Saint Vincent, Sydenham, Sullivan, Derby, and Keppel, Sarawak and Brooke, and the Town of Owen Sound.

The County of PERTH divided into two Ridings, to be called respectively the South and North Ridings :—

56. The North Riding to consist of the Townships of Wallace, Elma, Logan, Ellice, Mornington, and North Easthope, and the Town of Stratford.

57. The South Riding to consist of the Townships of Blanchard, Downie, South Easthope, Fullarton, Hibbert, and the Villages of Mitchell and St. Mary's.

The County of WELLINGTON divided into three Ridings to be called respectively North, South and Centre Ridings :—

58. The North Riding to consist of the Townships of Amaranth, Arthur, Luther, Minto, Maryborough, Peel, and the Village of Mount Forest.

59. The Centre Riding to consist of the Townships of Garafraxa, Erin, Eramosa, Nichol and Pilkington, and the Villages of Fergus and Elora.

60. The South Riding to consist of the Town of Guelph, and the Townships of Guelph and Fuslinch.

The County of NORFOLK, divided into Two Ridings, to be called respectively the South and North Ridings :—

61. The South Riding to consist of the Townships of Charlotteville, Houghton, Walsingham, and Woodhouse, and with the Gore thereof.
62. The North Riding to consist of the Townships of Middleton, Townsend, and Windham, and the Town of Simcoe.
63. The County of HALDIMAND to consist of the Townships of Oneida, Seneca, Cayuga North, Cayuga South, Rainham, Walpole, and Dunn.
64. The County of MONCK to consist of the Townships of Camborough and Moulton and Sherbrooke, and the Village of Dunnville (taken from the County of Haldimand), the Townships of Caister and Gainsborough (taken from the County of Lincoln), and the Townships of Pelham and Wainfleet (taken from the County of Welland).
65. The County of LINCOLN to consist of the Townships of Clinton, Grantham, Grimsby, and Louth, and the Town of St. Catherines.
66. The County of WELLAND to consist of the Townships of Bertie, Crowland, Humberstone, Stamford, Thorold, and Willoughby, and the Villages of Chippewa, Clifton, Fort Erie, Thorold, and Welland.
67. The County of PEEL to consist of the Townships of Chinguacousy, Toronto, and the Gore of Toronto, and the Villages of Brampton and Streetsville.
68. The County of CARDWELL to consist of the Townships of Albion and Caledon (taken from the County of Peel), and the Townships of Adjala and Mono (taken from the County of Simcoe).

The County of SIMCOE, divided into two Ridings, to be called respectively the South and the North Ridings :—

69. The South Riding to consist of the Townships of West Gwillimbury, Tecumseth, Innisfil, Essa, Tossorontio, Mulmur, and the Village of Bradford.
70. The North Riding to consist of the Townships of Nottawasaga, Sunnidale, Vespria, Flos, Oro, Medonte, Orillia and Matchedash, Tiny and Tay, Balaklava and Robinson, and the Towns of Barrie and Collingwood.

The County of VICTORIA, divided into two Ridings, to be called respectively the South and North Ridings :—

71. The South Riding to consist of the Townships of Ops, Mariposa, Emily, Verulam, and the Town of Lindsay.
72. The North Riding to consist of the Townships of Anson, Bexley, Carden, Dalton, Digby, Eldon, Fenelon, Hindon, Laxton, Lutterworth, Macaulay and Draper, Somerville and Morrison, Muskoka, Monck and Watt (taken from the County of Simcoe), and any other surveyed Townships lying to the north of the said North Riding.

The County of PETERBOROUGH divided into two Ridings, to be called respectively the West and East Ridings :—

73. The West Riding to consist of the Townships of South Monaghan



(taken from the County of Northumberland), North Monaghan, Smith, and Ennismore, and the Town of Peterborough.

74. The East Riding to consist of the Townships of Asphodel, Belmont and Methuen, Douro, Dummer, Galway, Harvey, Minden, Stanhope and Dysart, Otonabee and Snowden, and the Village of Ashburnham, and any other surveyed Townships lying to the north of the said East Riding.

The County of HASTINGS, divided into three Ridings, to be called respectively the West, East, and North Ridings :—

75. The West Riding to consist of the Town of Belleville, the Township of Sydney, and the Village of Trenton.
76. The East Riding to consist of the Townships of Thurlow, Tyendinaga, and Hungerford.
77. The North Riding to consist of the Townships of Rawdon, Huntingdon, Madoc, Elzevir, Tudor, Marmora, and Lake, and the Village of Stirling, and any other surveyed Townships lying to the North of the said North Riding.
78. The County of LENNOX to consist of the Townships of Richmond, Adolphustown, North Fredericksburgh, South Fredericksburgh, Ernest Town, and Amherst Island, and the Village of Napanee.
79. The County of ADDINGTON to consist of the Townships of Camden, Portland, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, Canonto, Denbigh, Loughborough, and Bedford.
80. The County of FRONTENAC to consist of the Townships of Kingston, Wolfe Island, Pittsburgh and Howe Island, and Storrington.

The County of RENFREW, divided into Two Ridings, to be called respectively the South and North Ridings :—

81. The South Riding to consist of the Townships of McNab, Bagot, Blithfield, Brougham, Horton, Admaston, Grattan, Matawatchan, Griffith, Lyndoch, Raglan, Radcliffe, Brudenell, Sebastopol, and the Villages of Arnprior and Renfrew.
82. The North Riding to consist of the Townships of Ross, Bromley, Westmeath, Stafford, Pembroke, Wilberforce, Alice, Petawawa, Buchanan, South Algona, North Algona, Fraser, McKay, Wylie, Rolph, Head, Maria, Clara, Hagarty, Sherwood, Burns, and Richards, and any other surveyed Townships lying north-westerly of the said North Riding.

---

Every Town and incorporated Village existing at the Union, not specially mentioned in this Schedule, is to be taken as part of the County or Riding within which it is locally situate.

---

THE SECOND SCHEDULE.

*Electoral Districts of Quebec specially fixed.*

COUNTIES OF—

Pontiac.	Missisquoi.	Compton.
Ottawa.	Brome.	Wolfe and Richmond.
Argenteuil.	Shefford.	Megantic.
Huntingdon.	Stanstead.	
	Town of Sherbrooke.	

THE THIRD SCHEDULE.

*Provincial Public Works and Property to be the Property of Canada.*

1. Canals, with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable Island.
4. Steamboats, Dredges, and public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
7. Military Roads.
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.
10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and Lands set apart for general public purposes.

THE FOURTH SCHEDULE.

*Assets to be the Property of Ontario and Quebec conjointly.*

Upper Canada Building Fund.  
 Lunatic Asylums.  
 Normal School.  
 Court Houses,  
     in  
 Aylmer.                   } Lower Canada.  
 Montreal.  
 Kamouraska.  
 Law Society, Upper Canada.  
 Montreal Turnpike Trust.  
 University Permanent Fund.  
 Royal Institution.  
 Consolidated Municipal Loan Fund, Upper Canada.  
 Consolidated Municipal Loan Fund, Lower Canada.  
 Agricultural Society, Upper Canada.  
 Lower Canada Legislative Grant.

Quebec Fire Loan.  
 Tamiscouata Advance Account.  
 Quebec Turnpike Trust.  
 Education—East.  
 Building and Jury Fund, Lower Canada.  
 Municipalities Fund.  
 Lower Canada Superior Education Income Fund.

---

## THE FIFTH SCHEDULE.

---

### OATH OF ALLEGIANCE.

I, *A. B.* do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

*Note.*—The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time, with proper terms of reference thereto.

---

### DECLARATION OF QUALIFICATION.

I, *A. B.* do declare and testify, That I am by law duly qualified to be appointed a member of the Senate of Canada [*or as the case may be*], and that I am legally or equitably seised as of freehold for my own use and benefit of lands or tenements held in free and common socage [*or seised or possessed for my own use and benefit of lands or tenements held in franc-alieu or in roture (or as the case may be),*] in the Province of Nova Scotia [*or as the case may be*] of the value of four thousand dollars over and above all rents, dues, debts, mortgages, charges, and incumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements or any part thereof for the purpose of enabling me to become a member of the Senate of Canada [*or as the case may be*], and that my real and personal property are together worth four thousand dollars over and above my debts and liabilities.





ANNO QUADRAGESIMO.

## VICTORIÆ REGINÆ.

### CHAPTER. 6.

An Act respecting the Revised Statutes of Ontario.

[Assented to 2nd March, 1877.]

**W**HEREAS it has been found expedient to revise, classify and consolidate the Public General Statutes, which apply to the Province of Ontario and are within the legislative authority of the Legislature of Ontario; And whereas such revision, classification and consolidation have been made accordingly; And whereas it is expedient to provide for the incorporation therewith of the Public General Statutes passed during the present Session, and for giving the force of law to the body of Revised Statutes to result from such incorporation;

Preamble.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. The printed Roll marked X and attested as that of the said Statutes so revised, classified and consolidated as aforesaid, under the signature of His Honour the Lieutenant-Governor and that of the Clerk of the Legislative Assembly, and deposited in the office of the Clerk of the Legislative Assembly, shall be held to be the original thereof, and to embody the several Acts and parts of Acts mentioned, as to be repealed in the Schedule A, thereto annexed; but the marginal notes thereon, and the references to former enactments at the foot of the several sections thereof, and the sections printed in bourgeois type, form no part of the said Statutes and shall be held to have been inserted for convenience of reference only, and may be omitted or corrected, and any misprint or error whether of commission or omission, or any contradiction or ambiguity in the said Roll may also be corrected, but without changing the legal

Original Roll of Statutes revised, etc., to be certified and deposited.

As to marginal notes, misprints, etc.



effect, and such alterations in the language of said Statutes as are requisite in order to preserve a uniform mode of expression and do not alter the legal effect may be made, and any of the enacting clauses in said Statutes may be printed in bourgeois type, and any of the sections in bourgeois type may be printed among the enacting clauses where proper—in the Roll hereinafter mentioned.

Lieutenant-Governor may cause the legislation of this Session to be incorporated with the Statutes in the said Roll.

2. The Lieutenant-Governor may select such Acts and parts of Acts passed during the present Session, as he may deem it advisable to incorporate with the said Statutes contained in the said first mentioned Roll, and may cause them to be so incorporated therewith, adapting their form and language to those of the said Statutes (but without changing their effect), inserting them in their proper places in the said Statutes, striking out of the latter any enactments repealed by or inconsistent with those so incorporated, altering the numbering of the chapters and sections, if need be, and adding to the said Schedule A a list of the Acts and parts of Acts of the present Session so incorporated as aforesaid.

Acts in respect to which the jurisdiction of the Provincial Legislature is doubtful.

3. In case the Lieutenant-Governor is advised that any of the Acts or parts of Acts included among the enacting clauses in such first mentioned Roll might be held to be not within the legislative authority of the Legislature of this Province, he may cause them to be omitted from the enacting clauses of the Roll hereinafter mentioned; and in case the Lieutenant-Governor is advised that any Acts or parts of Acts of the late Province of Canada, remaining in force and not included in the enacting clauses of said first mentioned Roll, might be held to be within the legislative authority of the Legislature of this Province, he may cause them to be inserted in the Roll hereinafter mentioned, making such alterations in their language as may be proper, but without changing the legal effect.

2. In either of said cases such alterations shall be made in said Schedule A as may by such omission or insertion, be rendered necessary.

Certified Roll including the legislation of the present Session to be deposited and serve as the original thereof

4. So soon as the said incorporation of such Acts, and parts of Acts with the said Statutes, and the said addition to the said Schedule A has been completed, the Lieutenant-Governor may cause a correct printed Roll thereof attested under his signature and countersigned by the Provincial Secretary, to be deposited in the office of the Clerk of the Legislative Assembly, which Roll shall be held to be the original thereof, and to embody the several Acts and parts of Acts mentioned as repealed in the amended Schedule A thereto annexed; any marginal notes however, references to former enactments, and sections printed in bourgeois type which may appear thereon being held to form no part of the said Statutes, but to be inserted for convenience of reference only.

5. The Lieutenant-Governor in Council, after such deposit of the said last mentioned Roll, may by Proclamation declare the day on, from and after which the same shall come into force and have effect as law, by the designation of "The Revised Statutes of Ontario."

Proclamation for bringing the Revised Statutes into force on a certain day.

6. On, from and after such day, the same shall accordingly come into force and effect as and by the designation of "The Revised Statutes of Ontario," to all intents as though the same were expressly embodied in and enacted by this Act, to come into force and have effect on, from and after such day; and on, from and after the same day, all the enactments in the several Acts and parts of Acts in such amended Schedule A mentioned, so far as they relate to this Province, shall stand and be repealed to the extent mentioned in the third column of said Schedule A, save only as hereinafter is provided.

On and after that day, they shall be in force and the enactments embodied in them repealed.

Exception:

7. Such repeal shall not be construed as intended to extend to such of the provisions of said Acts and parts of Acts as relate to subjects in regard to which the Parliament of Canada has exclusive powers of legislation; but the said Acts and parts of Acts (in so far only as is necessary to give effect to every such provision) shall remain in full force and effect, subject however to the tenth section of this Act.

Repeal not to extend to Acts over which the Dominion Parliament has jurisdiction.

8. The repeal of the said Acts and parts of Acts shall not revive any Act or provision of law repealed by them: nor shall the said repeal prevent the effect of any saving clause in the said Acts and parts of Acts, or the application of any of the said Acts or parts of Acts or of any Act or provision of law formerly in force, to any transaction, matter or thing anterior to the said repeal, to which they would otherwise apply.

Saving as to transactions, etc., anterior to the repeal.

9. The repeal of the said Acts and parts of Acts shall not affect—

Certain matters anterior to the repeal not to be affected by it,—

(a.) Any penalty, forfeiture or liability incurred before the time of such repeal, or any proceedings for enforcing the same, had, done, completed or pending at the time of such repeal,—

Penalties, etc.

(b.) Nor any action, suit, judgment, decree, certificate, execution, process, order, rule, or any proceeding, matter or thing whatever respecting the same, had, done, made, entered, granted, completed, pending, existing, or in force at the time of such repeal,—

Actions, etc.

(c.) Nor any act, deed, right, title, interest, grant, assurance, descent, will, registry, by-law, rule, regulation, contract, lien, charge, matter or thing, had, done, made, acquired, established or existing at the time of such repeal,—

Acts, deeds, rights, etc.

Offices etc. (d.) Nor any office, appointment, commission, salary, allowance, security, duty, or any matter or thing appertaining thereto, at the time of such repeal,—

Marriages, etc. (e.) Nor any marriage, certificate or registry thereof, lawfully had, made, granted or existing before or at the time of such repeal,—

And other matters, etc. (f.) Nor shall such repeal defeat, disturb, invalidate or prejudicially affect any other matter or thing whatsoever, had, done, completed, existing or pending at the time of such repeal ;

But the same shall remain valid, etc. 2. But every such

Penalty, forfeiture and liability, and every such

Action, suit, judgment, decree, certificate, execution, prosecution, order, rule, proceeding, matter or thing, and every such

Act, deed, right, title, interest, grant, assurance, descent, will, registry, by-law, rule, regulation, contract, lien, charge, matter or thing, and every such

Office, appointment, commission, salary, allowance, security and duty, and every such

Marriage, certificate and registry thereof, and every such other matter and thing, and the force and effect thereof, respectively,

And may be enforced, etc., and under what laws. may and shall, both at Law and in Equity, remain and continue as if no such repeal had taken place, and so far as necessary, may and shall be continued, prosecuted, enforced and proceeded with under the said Revised Statutes and other the statutes and laws having force in this Province, so far as applicable thereto, and subject to the provisions of the said several statutes and laws.

Revised Statutes not to be deemed new Laws. 10. The said Revised Statutes shall not be held to operate as new laws, but shall be construed and have effect as a consolidation, and as declaratory of, the law as contained in the said Acts and parts of Acts so repealed, and for which the said Revised Statutes are substituted.

How construed where the same in effect as the repealed Acts. 2. The various provisions in the Revised Statutes corresponding to and substituted for the provisions of the Acts and parts of Acts so repealed, shall, where they are the same in effect as those of the Acts and parts of Acts so repealed, be held to operate retrospectively as well as prospectively, and to have been passed upon the days respectively upon which the Acts and parts of Acts so repealed came into effect.

3. But if upon any point the provisions of the said Revised Statutes are not in effect the same as those of the repealed Acts and parts of Acts for which they are substituted, then as respects all transactions, matters and things subsequent to the time when the said Revised Statutes take effect, the provisions contained in them shall prevail, but as respects all transactions, matters and things anterior to the said time, the provisions of the said repealed Acts and parts of Acts shall prevail.

How construed if in any case they differ from the repealed Acts.

11. Any reference in any former Act remaining in force, or in any instrument or document, to any Act or enactment so repealed, shall, after the Revised Statutes take effect, be held, as regards any subsequent transaction, matter or thing, to be a reference to the enactments in the Revised Statutes having the same effect as such repealed Act or enactment.

As to references to repealed Acts, in former Acts, etc.

12. The insertion of any Act in the said Schedule A shall not be construed as a declaration that such Act or any part of it was or was not in force immediately before the coming into force of the said Revised Statutes.

As to effect of insertion of an Act in Schedule A.

13. Copies of the said Revised Statutes, printed by the Queen's Printer from the amended Roll so deposited, shall be received as evidence of the said Revised Statutes in all Courts and places whatsoever.

Copies printed by Queen's Printer to be evidence.

14. The laws relating to the distribution of the printed copies of the Statutes shall not apply to the said Revised Statutes, but the same shall be distributed in such numbers and to such persons only as the Lieutenant-Governor in Council may direct.

As to distribution of copies.

15. This Act shall be printed with the said Revised Statutes, and shall be subject to the same rules of construction as the said Revised Statutes.

This Act to be printed with the said Statutes.

16. Any chapter of the said Revised Statutes may be cited and referred to in any Act or proceeding whatever, either by its title as an Act, or by its short title, or by using the expression "The Revised Statute respecting—" (adding the remainder of the title given at the beginning of the particular chapter), or by using the expression "The Revised Statutes or The Revised Statutes of Ontario, chapter " (adding the number of the particular chapter in the copies printed by the Queen's Printer.)

How they may be cited.







PROVINCE OF  
ONTARIO. }

D. A. MACDONALD.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To all to whom these presents shall come—GREETING :

O. MOWAT, } WHEREAS in and by a certain Act of the Legislature of  
*Attorney-General.* } the Province of Ontario, passed in the Session of the  
Legislature of Ontario, held in the fortieth year of Her Majesty's Reign, and  
entitled, "An Act respecting the Revised Statutes of Ontario," it was amongst  
other things in effect enacted ;—That the printed Roll marked X, and attested as  
that of the Public General Statutes which apply to the Province of Ontario and  
are within the legislative authority of the Legislature of Ontario, revised, classi-  
fied and consolidated, under the signature of His Honour the Lieutenant-Governor,  
and that of the Clerk of the Legislative Assembly, and deposited in the office of  
the Clerk of the Legislative Assembly, should be held to be the original thereof,  
and to embody the several Acts and parts of Acts mentioned as to be repealed in  
the Schedule A thereto annexed ; but that the marginal notes thereon, and the  
references to former enactments at the foot of the several sections thereof, and the  
sections printed in bourgeois type, should form no part of the said Statutes, and  
should be held to have been inserted for convenience of reference only, and might  
be omitted or corrected ; and that any mis-print or error whether of commission  
or omission or any contradiction or ambiguity in the said Roll might also be cor-  
rected, but without changing the legal effect ; and that such alterations in the  
language of said Statutes as should be requisite in order to preserve a uniform  
mode of expression, and would not alter the legal effect might be made, and that  
any of the enacting clauses in said Statutes might be printed in bourgeois type,  
and that any of the sections in bourgeois type might be printed among the

enacting clauses where proper, in the Roll thereafter mentioned; That the Lieutenant-Governor might select such Acts and parts of Acts passed during the said Session, as he might deem it advisable to incorporate with the said Statutes contained in the said first mentioned Roll, and might cause them to be so incorporated therewith, adapting their form and language to those of the said Statutes (but without changing their effect), inserting them in their proper places in the said Statutes, striking out of the latter any enactments repealed by or inconsistent with those so incorporated, altering the numbering of the chapters and sections, if need be, and adding to the said Schedule A a list of the Acts and parts of Acts of the said Session so incorporated as aforesaid; That in case the Lieutenant-Governor should be advised that any of the Acts or parts of Acts included among the enacting clauses in such first mentioned Roll might be held to be not within the legislative authority of the Legislature of this Province, he might cause them to be omitted from the enacting clauses of the Roll thereafter mentioned; and that in case the Lieutenant-Governor should be advised that any Acts or parts of Acts of the late Province of Canada, remaining in force and not included in the enacting clauses of said first mentioned Roll, might be held to be within the legislative authority of the Legislature of this Province, he might cause them to be inserted in the Roll thereafter mentioned, making such alterations in their language as might be proper, but without changing the legal effect; that in either of said cases such alterations should be made in said Schedule A as might by such omission or insertion, be rendered necessary; That so soon as the said incorporation of such Acts and parts of Acts with the said Statutes, and the said addition to the said Schedule A should be completed, the Lieutenant-Governor might cause a correct printed Roll thereof attested under his signature and countersigned by the Provincial Secretary, to be deposited in the office of the Clerk of the Legislative Assembly, which Roll should be held to be the original thereof, and to embody the several Acts and parts of Acts mentioned as repealed in the amended Schedule A thereto annexed; any marginal notes however, references to former enactments and sections printed in bourgeois type, which might appear thereon being held to form no part of the said Statutes but to be inserted for convenience of reference only; That the Lieutenant-Governor in Council, after such deposit of the said last mentioned Roll, might, by Proclamation, declare the day on, from and after which the same should come into force and have effect as law by the designation of "The Revised Statutes of Ontario;" and that on, from and after such day, the same should accordingly come into force and effect as and by the designation of "The Revised Statutes of Ontario" to all intents as though the same were expressly embodied in and enacted by said Act, to come into force and have effect on, from and after such day; and that on, from and after the same day, all the enactments in the several Acts and parts of Acts in such amended Schedule A mentioned, so far as they relate to this Province, should stand and be repealed,—to the extent mentioned in the third column of said

Schedule A save only as thereafter provided : AND WHEREAS THE HONOURABLE DONALD ALEXANDER MACDONALD, being Lieutenant-Governor of Our said Province of Ontario, has selected such Acts and parts of Acts passed during the Session of the Legislature of the Province of Ontario, now last past, as he has deemed it advisable to incorporate with the Statutes contained in the said printed Roll marked X, and has caused them to be so incorporated therewith, adapting their form and language to those of the said Statutes, (but without changing their effect,) and has caused them to be inserted in their proper places in the said Statutes, striking out of the latter such enactments as are repealed by, or are inconsistent with those so incorporated, and has caused the numbering of the Chapters and Sections to be altered, as was necessary, and has caused to be added to the said Schedule A a list of the Acts and parts of Acts of the said Session so incorporated as aforesaid, and has caused to be omitted from the enacting clauses of the Roll hereinafter mentioned such Acts and parts of Acts as he has been advised might be held to be not within the legislative authority of the Legislature of the Province of Ontario, and has caused to be inserted in the Roll hereinafter mentioned such Acts and parts of Acts of Our late Province of Canada remaining in force and not included in the enacting clauses of the said Roll X, as he has been advised might be held to be within the legislative authority of the Legislature of the Province of Ontario, making such alterations in the language as was proper but without changing the legal effect, and has caused such alterations to be made in said Schedule A as were by such omission or insertion rendered necessary ; AND WHEREAS so soon as the said incorporation of such Acts and parts of Acts with the said Statutes and the said addition to the said Schedule A were completed, the Lieutenant Governor caused a correct printed Roll thereof, attested under his signature, and countersigned by the Provincial Secretary, to be deposited in the office of the Clerk of the Legislative Assembly : AND WHEREAS the provisions contained in the first four sections of the said Act have been duly carried into effect ; AND WHEREAS Our said Lieutenant-Governor, after such deposit of the said last mentioned Roll, by and with the advice and consent of Our Executive Council for the said Province, has named the THIRTY-FIRST day of DECEMBER instant as the day on, from and after which the same shall come into force and have effect as law by the designation of "The Revised Statutes of Ontario;" NOW KNOW YE, that by and with the advice of Our Executive Council of the said Province of Ontario, We do, by this Our Royal Proclamation, declare that on, from and after the THIRTY-FIRST day of the month of DECEMBER instant, the said last mentioned Roll attested under the signature of Our said Lieutenant-Governor of Our Province of Ontario, countersigned by the Provincial Secretary and deposited in the office of the Clerk of the Legislative Assembly of the said Province as aforesaid, shall come into force and have effect as law by the designation of "The Revised Statutes of Ontario," to all intents as though the same were expressly embodied in and enacted by the said Act. Of all which Our loving

subjects of Our said Province, and all others whom these presents may concern, are hereby required to take notice, and to govern themselves accordingly.

IN TESTIMONY WHEREOF, we have caused these Our Letters to be made Patent, and the Great Seal of Our said Province to be hereunto affixed: WITNESS Our Right Trusty and Well-Beloved the Honourable DONALD ALEXANDER MACDONALD, at Our Government House, in Our CITY OF TORONTO, in Our said Province of Ontario, this SEVENTH day of DECEMBER, in the year of Our Lord one thousand eight hundred and seventy-seven, and in the forty-first year of our Reign.

By Command,

ARTHUR S. HARDY,

*Provincial Secretary.*

# REVISED STATUTES OF ONTARIO.

---

## PRELIMINARY.

---

- CHAP. 1.—Form and Interpretation of the Statutes, p. 1.  
2.—Printing and Distribution of the Statutes, p. 10.
- 

## CHAPTER 1.

### An Act respecting the Form and Interpretation of the Statutes.

---

- |  |  |
|--|--|
| Short title, s. 1.                                   | "Registrar," s. 8 (21).  |
| Mode of citing Revised Statutes, s. 2.               | "Magistrate," s. 8 (22).   |
| Form of Statutes, ss. 3, 4.                          | Construction of words—   |
| Amendment of an Act by an Act of same Session, s. 5. | expressing number or gender, s. 8 (23).                                  |
| Time of Commencement of Acts, s. 6.                  | constituting bodies corporate, s. 8 (24).                                |
| Interpretation and Rules of Construction, ss. 7-10.  | authorizing appointment of public officers, s. 8 (25-27).                |
| Law always speaking, s. 8 (1).                       | Imprisonment where no place specified, s. 8 (28).                        |
| Meaning of—  | Recovery of penalties where mode not specified, s. 8 (29 & 30).          |
| "shall" and "may," s. 8 (2).                         | Application of penalties when not otherwise appropriated, s. 8 (31).     |
| "herein," s. 8 (3).                                  | Appropriation of public moneys when no mode specified, s. 8 (32).        |
| "now" or "next," s. 8 (4).                           | Acts to be done by more than two may be done by a majority, s. 8 (33).   |
| "Her Majesty," "The Crown," &c., s. 8 (5).           | Deviations from forms prescribed, s. 8 (34).                             |
| "Lieut.-Governor," &c., s. 8 (6).                    | Power to make by-laws, rules, &c., to include power to alter, s. 8 (35). |
| "Lieut.-Governor in Council," s. 8 (7).              | All Acts to be deemed Public Acts, s. 8 (36).                            |
| "United Kingdom," &c., s. 8 (8).                     | Preamble to be part of an Act, s. 8 (37).                                |
| "Upper Canada," s. 8 (9).                            | All Acts to be deemed remedial, s. 8 (38).                               |
| "Lower Canada," s. 8 (9).                            |  |
| "proclamation," s. 8 (10 & 11).                      |  |
| "county," s. 8 (12).                                 |  |
| "person," s. 8 (13).                                 |  |
| "writing," "written," s. 8 (14).                     |  |
| "month," "year," s. 8 (15).                          |  |
| "holiday," s. 8 (16).                                |  |
| "oath," s. 8 (17).                                   |  |
| "sureties," s. 8 (18).                               |  |
| "Superior Courts," &c., s. 8 (19 & 20).              |  |



Power to repeal or amend implied, s. 8 (39).	rules, &c., made before repeal, s. 8 (44).
Repeal of Acts—	appointments, securities given before repeal, s. 8 (45).
not to revive repealed Acts, s. 8 (40).	Acts not to affect the Crown unless specially mentioned, s. 8 (46).
officers, penalties, &c., under repealed Act, s. 8 (41).	Other rules of construction applicable, s. 8 (47).
acts done before repeal, s. 8 (42).	Interpretation of Acts relating to Municipalities, s. 9.
offences and penalties incurred and pending proceedings, s. 8 (43).	Interpretation of this Act, s. 10.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

Short title.

1. This Act may be cited as "*The Interpretation Act*," or "*The Interpretation Act of Ontario*."

What to constitute "The Revised Statutes of Ontario."

2. This Act and the following series of Acts shall constitute and may be cited for all purposes as *The Revised Statutes of Ontario* : and any chapter of the said Revised Statutes may be cited and referred for all purposes whatever, either by its title as an Act, or by its short title, or by using the expression "*The Act* (or "*The Revised Statute*) *respecting*—" (adding the remainder of the title given at the beginning of the particular chapter), or by using the expression "*The Revised Statutes*" (or "*The Revised Statutes of Ontario*"), together with a reference to the number of the particular chapter in the copies printed by the Queen's Printer. 40 V. c. 6, s. 16. See C. S. U. C. c. 2, s. 1.

How they may be cited.

#### FORM OF ENACTING.

Form of enacting clause.

3. The following words may be inserted in the preambles of statutes, and shall indicate the authority by virtue of which they are passed : " Her Majesty, by and with the advice and consent " of the Legislative Assembly of the Province of Ontario, enacts " as follows." 31 V. c. 1, s. 1.

Clauses follow in concise form.

4. After the insertion of the words aforesaid, which shall follow the setting forth of the considerations or reasons upon which the law is grounded, and which shall, with these considerations or reasons, constitute the entire preamble, the various clauses of the statute shall follow in a concise and enunciative form. 31 V. c. 1, s. 2.

Any Act may be amended during the Session in which it was passed.

5. Any Act of the Legislature of Ontario may be amended, altered or repealed by any Act to be passed in the same Session thereof. C. S. C. c. 5, s. 5 ; 31 V. c. 1, s. 5.

#### TIME OF COMMENCEMENT OF ACTS.

Date of assent to be endorsed on every Act.

6. The Clerk of the Legislative Assembly shall endorse on every Act of the Legislature of Ontario, immediately after the title of such Act, the day, month and year when the same was

by the Lieutenant-Governor assented to, or reserved,—and in the latter case, the Clerk of the Legislative Assembly shall also endorse thereon the day, month and year when the Lieutenant-Governor has signified either by speech or message to the Legislative Assembly, or by proclamation, that the same was laid before the Governor-General in Council, and that the Governor-General was pleased to assent to the same; and such endorsement shall be taken to be a part of the Act, and the date of the assent or signification, as the case may be, shall be the date of the commencement of the Act, if no later commencement is therein provided. 31 V. c. 1, s. 4.

Effect of such endorsement.

#### INTERPRETATION AND RULES OF CONSTRUCTION.

7. This section and the following sections of this Act, and each provision thereof, shall extend and apply to these Revised Statutes of Ontario and to every Act of the Legislature of Ontario, passed after the said Revised Statutes take effect, except in so far as the provision is inconsistent with the intent and object of such Act, or the interpretation which such provision would give to any word, expression or clause, is inconsistent with the context,—and except in so far as any provision thereof is in any such Act declared not applicable thereto;—Nor shall the omission in any Act of a declaration that “*The Interpretation Act*” shall apply thereto, be construed to prevent its so applying, although such express declaration may be inserted in some other Act or Acts of the same Session. 31 V. c. 1, s. 3.

The interpretation clauses to apply to Rev. Stat. and to all subsequent Acts.

8. Subject to the limitations in the preceding section of this Act—in every Act to which this section applies,

How enactments shall be construed.

1. The Law shall be considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its spirit, true intent and meaning;

Application of expressions in present tense.

2. The word “shall” shall be construed as imperative and the word “may” as permissive;

“Shall” and “may.”

3. Wherever the word “herein” is used in any section of an Act, it shall be understood to relate to the whole Act and not to that section only. C. S. U. C. c. 1, s. 18; 22 V. c. 29, s. 13 (2-4); 31 V. c. 1, s. 6.

4. The word “now” or “next” shall be construed as having reference to the time when the Act was presented for the Royal Assent; C. S. C. c. 5, s. 6 (10); 31 V. c. 1, s. 7 (11).

“Now,” or “Next.”

5. The words “Her Majesty,” “the Queen,” or “the Crown,” shall mean Her Majesty, Her Heirs and Successors, Sovereigns

“Her Majesty,” &c.

of the United Kingdom of Great Britain and Ireland. C. S. C. c. 5, s. 6 (1); C. S. U. C. c. 2, s. 2; 31 V. c. 1, s. 7 (1).

“Lieutenant-Governor,” &c. 6. The words “Lieutenant-Governor,” or “Governor,” shall mean the Lieutenant-Governor for the time being of Ontario, or other the Chief Executive Officer or Administrator for the time being carrying on the government of Ontario, by whatever title he is designated; C. S. C. c. 5, s. 6 (2); C. S. U. C. c. 2, s. 3; 31 V. c. 1, s. 7 (2).

“Lieutenant-Governor in Council,” &c. 7. The words “Lieutenant-Governor in Council,” or “Governor in Council,” shall mean—the Lieutenant-Governor of Ontario, or person administering the government of Ontario for the time being, acting by and with the advice of the Executive Council for Ontario; C. S. C. c. 5, s. 6 (3); 31 V. c. 1, s. 7 (3).

“United Kingdom,”  
“United States,”  
Names of places, &c., generally. 8. The words “the United Kingdom,” shall mean the United Kingdom of Great Britain and Ireland: and the words “the United States,” shall mean the United States of America: and generally, the name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing, shall mean such country, place, body, corporation, society, officer, functionary, person, party or thing, although such name be not the formal and extended designation thereof; C. S. C. c. 5, s. 6 (6); 31 V. c. 1, s. 7 (4).

“Upper Canada,” “Lower Canada.” 9. The words “Upper Canada,” shall mean all that part of Canada which formerly constituted the Province of Upper Canada; and the words “Lower Canada,” shall mean all that part of Canada which formerly constituted the Province of Lower Canada; C. S. C. c. 5, s. 6 (4) & (5); C. S. U. C. c. 2, s. 6.

“Proclamation,” “Great Seal.” 10. The word “proclamation,” shall mean a proclamation under the Great Seal; and the expression “Great Seal,” shall mean the Great Seal of Ontario; 22 V. c. 29, s. 13 (6); C. S. U. C. c. 2, s. 4; 31 V. c. 1, s. 7 (5).

Lieutenant-Governor acting by proclamation. 11. Where the Lieutenant-Governor is authorized to do any act by proclamation, such proclamation is to be understood to be a proclamation issued under an order of the Lieutenant-Governor in Council; but it shall not be necessary that it be mentioned in the proclamation that it is issued under such order; 22 V. c. 29, s. 13 (7); C. S. U. C. c. 2, s. 5; 31 V. c. 1, s. 7 (6).

“County.” 12. The word “County” shall include two or more Counties united for purposes to which the enactment relates; C. S. U. C. c. 2, s. 7; 22 V. c. 29, s. 13 (8) 31 V. c. 1, s. 7 (7).

“Person.” 13. The word “person” shall include any body corporate or politic, or party, and the heirs, executors, administra-

tors or other legal representatives of such person, to whom the context can apply according to law; C. S. C. c. 5, s. 6 (8); C. S. U. C. c. 2, s. 12; 31 V. c. 1, s. 7 (9).

14. The words "writing," "written," or any term of "Writing," like import, shall include words printed, painted, engraved, "Written," lithographed, or otherwise traced or copied; C. S. C. c. 5, s. 6 (9); 31 V. c. 1, s. 7 (10).

15. The word "month" shall mean a calendar month; and the word "year," a calendar year; C. S. U. C. c. 2, s. 13; "Year," C. S. C. c. 5, s. 6 (11); 31 V. c. 1, s. 7 (12).

16. The word "holiday" shall include Sundays, New Year's "Holiday," Day, Good Friday, Easter Monday, and Christmas Day, the days appointed for the celebration of the birth-day of Her Majesty and of Her Royal Successors, and any day appointed by proclamation of the Governor-General or Lieutenant-Governor as a public holiday or for a General Fast or Thanksgiving; C. S. C. c. 5, s. 6 (12); 31 V. c. 1, s. 7 (13); 39 V. c. 7, s. 13.

17. The word "oath" shall be construed as meaning a solemn "Oath," affirmation whenever the context applies to any person and case by whom and in which a solemn affirmation may be made instead of an oath, and in like cases the word "sworn" shall include the word "affirmed":—And in every case where "Sworn," an oath or affirmation is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same and to certify its having been made; C. S. C. c. 5, s. 6 (13); C. S. U. C. c. 2, ss. 14 & 15; 31 V. c. 1, s. 7 (14).

18. The word "sureties" shall mean sufficient sureties, "Sureties," and the word "security" shall mean sufficient security, and "Security," where these words are used, one person shall be sufficient therefor unless otherwise expressly required; 31 V. c. 1, s. 7 (15).

19. The words "Superior Courts" or "Superior Courts of Law and Equity" shall denote the Court of Queen's Bench, "Superior Courts," the Court of Common Pleas, and the Court of Chancery; C. S. of Law and Equity," U. C. c. 2, s. 8; 31 V. c. 1, s. 7 (16).

20. The words "Superior Courts of Common Law" or the words "Superior Courts of Law," shall mean the Courts of Queen's Bench and Common Pleas; and the words "Court of Common Law," "Court of Equity" shall mean the Court of Chancery; C. S. U. C. of Equity," c. 2, s. 9.

21. The word "Registrar" shall mean and include indifferently "Registrar," Registrars and their Deputies; C. S. C. c. 5, s. 6 (14); 31 V. c. 1, s. 7 (17).



"Magistrate,"  
"Two Jus-  
tices."

"Justice of  
the Peace."

Power to do  
anything to  
include all ne-  
cessary powers  
for doing it.

Number and  
gender.

Words consti-  
tuting a cor-  
poration to  
vest certain  
powers in it.

Words autho-  
rizing appoint-  
ment include  
power to  
remove.

Directions to  
public officer  
to apply to his  
successors and  
his deputy.

Appointments  
by Lieutenant-  
Governor to be

22. The word "Magistrate" shall mean a Justice of the Peace; the words "two Justices" shall mean two or more Justices of the Peace, assembled or acting together; the words "Justice of the Peace" or "Magistrate" shall include two or more Justices of the Peace or Magistrates assembled or acting together; And if anything is directed to be done by or before a Magistrate or a Justice of the Peace, or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done:—And wherever power is given to any person, officer or functionary to do or to enforce the doing of any act or thing, all such powers shall be understood to be also given as are necessary to enable such person, officer, or functionary to do or enforce the doing of such act or thing; C. S. C. c. 5, s. 6 (20); C. S. U. C. c. 2, s. 16; 31 V. c. 1, s. 7 (23).

23. Words importing the singular number or the masculine gender only, shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse; C. S. C. c. 5, s. 6 (7); C. S. U. C. c. 2, s. 10; 31 V. c. 1, s. 7 (8).

24. Words making any association or number of persons a corporation or body politic and corporate, shall vest in such corporation power to sue and be sued, contract and be contracted with, by their corporate name, to have a common seal, and to alter or change the same at their pleasure, and to have perpetual succession, and power to acquire and hold personal property or movables for the purposes for which the corporation is constituted, and to alienate the same at pleasure; and shall also vest in any majority of the members of the corporation, the power to bind the others by their acts; and shall exempt the individual members of the corporation from personal liability for its debts or obligations or acts, provided they do not contravene the provisions of the Act incorporating them; C. S. C. c. 5, s. 6 (24); 31 V. c. 1, s. 7 (28).

25. Words authorizing the appointment of any public officer or functionary, or any deputy, shall include the power of removing him, re-appointing him, or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested; C. S. C. c. 5, s. 6 (22); 31 V. c. 1, s. 7 (25).

26. Words directing or empowering a public officer or functionary to do any act or thing, or otherwise applying to him by his name or office, shall include his successors in such office, and his or their lawful deputy; C. S. C. c. 5, s. 6 (23); 31 V. c. 1, s. 7 (26).

27. All officers now appointed or hereafter to be appointed by the Lieutenant-Governor, whether by commission or other-



wise, shall remain in office during pleasure only; 31 V. c. 1, s. 7 (27). during pleasure.

28. If in any Act any party is directed to be imprisoned or committed to prison, such imprisonment or committal shall, if no other place is mentioned or provided by law, be in or to the Common Gaol of the locality in which the order for such imprisonment is made, or if there be no Common Gaol there, then in or to that Common Gaol which is nearest to such locality; and the keeper of any such Common Gaol shall receive such person, and him safely keep and detain in such Common Gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken; C. S. C. c. 5, s. 6 (21); 31 V. c. 1, s. 7 (24). Imprisonment where to be when no special place is mentioned.

29. Wherever any pecuniary penalty or any forfeiture is imposed for any contravention of any Act,—then, if no other mode is prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable with costs by civil action or proceeding at the suit of the Crown only, or of any private party suing as well for the Crown as for himself, in any form allowed in such case by the law of this Province, before any Court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of any one credible witness other than the plaintiff or party interested: And if no other provision is made for the appropriation of such penalty or forfeiture, one-half thereof shall belong to the Crown, and the other half shall belong to the private plaintiff, if any there be, and if there be none, the whole shall belong to the Crown. C. S. C. c. 5, s. 6 (17); 31 V. c. 1, s. 7 (20). Recovery of penalties when no other mode is prescribed.

30. Where a pecuniary penalty or forfeiture is imposed by any Act of this Province, and the amount of the penalty or forfeiture is in any respect in the discretion of the Court or Judge, or in case the Court or Judge has the right to impose imprisonment in addition, or in lieu of such penalty or forfeiture, and no other mode is by the Act expressly prescribed for the recovery of the penalty or forfeiture, the same may be recovered upon indictment in any Court of Oyer and Terminer or General Sessions of the Peace; 37 V. c. 7, s. 94. Appropriation.

31. Any duty, penalty or sum of money, or the proceeds of any forfeiture, which is by any Act given to the Crown, shall, if no other provision be made respecting it, form part of the Consolidated Revenue Fund of this Province, and be accounted for and otherwise dealt with accordingly. C. S. C. c. 5, s. 6 (18); 31 V. c. 1, s. 7 (21). *See also Rev. Stat. c. 89, s. 2.* Cases wherein pecuniary penalty imposed by statute may be recovered on indictment.

32. If any sum of the public money is by any Act appropriated for any purpose, or directed to be paid by the Lieutenant-Governor,—then, if no other provision is made respecting it, such sum shall be payable under warrant of the When not otherwise appropriated to form part of Consolidated Revenue Fund.

Paying and accounting for moneys appropriated by statute.

Lieutenant-Governor directed to the Treasurer of the Province, out of the Consolidated Revenue Fund: and all persons entrusted with the expenditure of any such sum, or any part thereof, shall account for the same in such manner and form, with such vouchers, at such periods and to such officer, as the Lieutenant-Governor may direct. C. S. C. c. 5, s. 6 (19); 31 V. c. 1, s. 7 (22).

Acts to be done by more than two.

33. Where any act or thing is required to be done by more than two persons, a majority of them may do it; C. S. U. C. c. 2, s. 17; 22 V. c. 29, s. 13 (5); 31 V. c. 1, s. 8.

Deviation from forms.

34. Where forms are prescribed, slight deviations therefrom not affecting the substance or calculated to mislead, shall not vitiate them; 31 V. c. 1, s. 7 (29).

Power to make by-laws, &c., to confer power to repeal.

35. Where power to make by-laws, regulations, rules or orders is conferred, it shall include the power to alter or revoke the same and make others; 31 V. c. 1, s. 7 (30).

All Acts to be deemed public Acts.

36. Every Act shall, unless by express provision it is declared to be a Private Act, be deemed to be a Public Act, and shall be judicially noticed by all Judges, Justices of the Peace, and others, without being specially pleaded;—And all copies of Acts, public or private, printed by the Queen's Printer, shall be evidence of such Acts, and of their contents; and every copy purporting to be printed by the Queen's Printer shall be deemed to be so printed, unless the contrary be shown; C. S. C. c. 5, s. 6 (28); 31 V. c. 1, s. 7 (38).

Proof of Acts.

Preamble to be a part of Act.

37. The Preamble of an Act shall be deemed a part thereof intended to assist in explaining the purport and object of the Act; C. S. C. c. 5, s. 6 (28); 31 V. c. 1, s. 7 (39).

All Acts remedial.

38. Every Act and every provision or enactment thereof shall be deemed remedial, whether its immediate purport be to direct the doing of anything which the Legislature deems to be for the public good, or to prevent or punish the doing of anything which it deems to be contrary to the public good,—and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act, and of such provision or enactment, according to their true intent, meaning and spirit; C. S. C. c. 5, s. 6 (28); 31 V. c. 1, s. 7 (39).

Power to Legislature to repeal or amend any Act.

39. Every Act shall be so construed as to reserve to the Legislature the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person or party, whenever such repeal, amendment, revocation, restriction, or modification is deemed by the Legislature to be required for the public good; C. S. C. c. 5, s. 6 (26); 31 V. c. 1, s. 7 (32).

40. The repeal of any Act or part of an Act shall not revive Repeal of an Act not to revive an Act by it repealed. any Act or provision of law repealed by such Act or part of an Act, or prevent the effect of any saving clause therein : 38 V. c. 4, s. 1.

41. Where any Act is repealed, wholly or in part, and other provisions substituted, all officers, persons, bodies politic or corporate, acting under the old law, shall continue to act as if appointed under the new law, until others are appointed in their stead : and all proceedings taken under the old law shall be taken up and continued under the new law, when not inconsistent therewith : and all penalties and forfeitures may be recovered, and all proceedings had, in relation to matters which have happened before the repeal, in the same manner as if the law were still in force, pursuing the new provisions as far as they can be adapted to the old law ; 31 V. c. 1, s. 7 (33). Effect of repeal of Act on persons acting under it.

42. The repeal of an Act at any time shall not affect any act done or any right or right of action existing, accruing, accrued or established, or any proceedings commenced in a civil cause, before the time when such repeal shall take effect : but the proceedings in such case shall be conformable when necessary to the repealing Act ; 31 V. c. 1, s. 7 (34). Act to have, &c. done before repeal.

43. No offence committed, and no penalty or forfeiture incurred, and no proceeding pending under any Act at any time repealed, shall be affected by the repeal, except that the proceedings shall be conformable, where necessary, to the repealing Act, and that where any penalty, forfeiture or punishment has been mitigated by any of the provisions of the repealing Act, such provisions shall be extended and applied to any judgment to be pronounced after such repeal ; 31 V. c. 1, s. 7 (35). Offences committed and penalties incurred not affected by repeal.

44. All rules and regulations made under any Act before the repeal thereof, shall continue valid until altered or annulled ; 31 V. c. 1, s. 7 (36). Rules, &c. made before repeal.

45. All appointments, and all bonds and securities given by the parties appointed under any Act at any time passed and repealed, shall not be affected thereby, but remain in full force ; and all offices, establishments, books, papers and other things made or used under any repealed Act, shall continue as before the repeal ; 31 V. c. 1, s. 7 (37). Appointments and bonds given before repeal.

46. No provision or enactment in any Act shall affect in any manner or way whatsoever, the rights of Her Majesty, Her Heirs or Successors, unless it is expressly stated therein that Her Majesty shall be bound thereby, nor if such Act be in the nature of a Private Act, shall it affect the rights of any person, or of any body politic, corporate or collegiate, such only excepted as are therein mentioned or referred to ; C. S. C. c. 5, s. 6 (25) : 31 V. c. 1, s. 7 (31). Act not to affect the Crown unless expressly stated.

Other rules of construction applicable.

47. Nothing in this section shall exclude the application to any Act, of any rule of construction applicable thereto, and not inconsistent with this section. C.S. C. c. 5, s. 6 (29); 31 V. c. 1, s. 7 (40).

The interpretation clause of Rev. Stat. c. 174.

9. The interpretation clause of "*The Municipal Act*" shall, so far as the terms defined can be applied, extend to any Act which relates to Municipalities. C.S. U. C. c. 2, s. 11.

Provisions herein to apply to this Act.

10. The provisions of this Act shall apply to the construction thereof, and to the words and expressions used therein. C.S. C. c. 5, s. 6 (30); 31 V. c. 1, s. 7 (41).

## CHAPTER 2.

### An Act respecting the Printing and Distribution of the Statutes.

Statutes, how to be printed and bound, s. 1.	List of persons to whom copies are to be sent to be furnished to Queen's Printer, s. 5.
Copies of Acts when passed to be sent to Queen's Printer, s. 2.	Extra copies, disposal of, s. 6.
Printing and Distribution by Queen's Printer, s. 3, 4.	Report by Queen's Printer of distribution, s. 7.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

How statutes shall be printed and bound.

1. The Statutes shall be printed in royal octavo form, on fine paper, in small pica type, thirty-two ems by fifty-five ems, including marginal notes in minion, such notes referring to the year and chapter of previous Statutes, whenever the text amends, repeals or changes the enactments of former years; and shall be half bound in cloth, with backs of red sheep-skin, and lettered; and they shall be arranged for distribution in such manner, either by the binding of the Public General Acts and Acts of a local or private character, in separate volumes, or by binding them together in the same volumes with separate indexes or otherwise, as the Lieutenant-Governor in Council may deem expedient. 31 V. c. 1, s. 13.

Classification of statutes.

Certified copy of every Act to be furnished to Queen's Printer.

2. The Clerk of the Legislative Assembly shall furnish the Queen's Printer with a certified copy of every Act of the Legislature, so soon as the same has received assent, or if the Bill has been reserved, so soon as the assent thereto has been proclaimed in this Province. 31 V. c. 1, s. 9.

Queen's Printer to distribute Acts.

3. The Queen's Printer shall, immediately after the close of each Session of the Legislature, or so soon after as may be



practicable, deliver or transmit by post, or otherwise, in the most economical mode, the proper number of printed copies of the Acts of the Session (to be printed by him at the public expense) to the parties hereinafter mentioned, that is to say:—

(a) To the Members of the Legislative Assembly respectively, such numbers of copies each as may from time to time be directed by any resolution of the said Assembly, or in default of such resolution, in such numbers as shall be directed by any order of the Lieutenant-Governor in Council; Who shall receive such copies.

(b) To such Public Departments, Administrative Bodies and Officers, throughout the Dominion of Canada, as may be specified in any order to be for that purpose made from time to time by the Lieutenant-Governor in Council. 31 V. c. 1, s. 10.

4. When any Bill receives assent during and before the termination of any Session of the Legislature, the Queen's Printer shall, on intimation to that effect from the Provincial Secretary, cause distribution to be made of such number of copies thereof, to the same parties and in like manner as is hereinbefore provided in regard to the Acts of any Session. 31 V. c. 1, s. 10. As to Bills assented to during and before the end of the Session.

5. The Provincial Secretary shall, within fifteen days after the close of each Session of the Legislature, transmit to the Queen's Printer a list of all the Public Departments, Administrative Bodies and Officers to whom such copies are to be transmitted as aforesaid, and shall also, from time to time, as occasion requires, furnish him with copies of all Orders in Council made under the provisions of this Act. 31 V. c. 1, s. 11. List to be furnished of persons to receive copies.

6. If after the distribution of the said printed Acts any copies remain in the hands of the Queen's Printer, he may deliver any number thereof to any person by order of the Lieutenant-Governor, on notice thereof by the Provincial Secretary, or to the members of the Legislative Assembly, on the order of the Speaker of the said Assembly. 31 V. c. 1, s. 12. If any copies remain, etc.

7. The Queen's Printer shall, before the opening of each Session of the Legislative Assembly, make a report in triplicate to the Lieutenant-Governor (to be by him laid before the said Assembly within fifteen days after the opening of such Session), shewing the number of copies of the Acts of each Session which have been printed and distributed by him since the last Session, the Departments, Administrative Bodies, Officers and persons to whom the same have been distributed, the number of copies delivered to each, and under what authority, and the number of copies of the Acts of each Session then remaining in his hands, and containing also a detailed account of the expenses by him actually incurred in carrying this Act into effect, to the end that provision may be made for defraying the same, after such account has been duly audited and allowed. 31 V. c. 1, s. 14. Report by Queen's Printer as to number of copies distributed, And as to expense incurred by him.



## TITLE II.

### TERRITORIAL DIVISION.

---

- CHAP. 3.—Boundary between Ontario and Quebec, p. 12.  
 4.—Northerly and Westerly Boundaries of Ontario, p. 14.  
 5.—Territorial Division of the Province into Counties and Districts, p. 16.  
 6.—Provisional County of Haliburton, p. 36.  
 7.—Territorial Districts of Muskoka, Parry Sound, and Thunder Bay, p. 42.
- 

### CHAPTER 3.

#### An Act respecting the Boundary between the Provinces of Ontario and Quebec.

---

Recital of proceedings taken in order to establish the boundary between Ontario and Quebec.—Preamble.  
 Consent of Ontario to establishment of the boundary accordingly by the Dominion, s. 1.

---

Preamble.

**W**HEREAS it was, by Royal Proclamation, dated the eighteenth day of June, in the year one thousand seven hundred and ninety-one, declared that the then Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following Line of Division, viz.—Commencing at a stone boundary on the North Bank of the Lake St. Francis at the cove west of Pointe au Baudet, in the limit between the Township of Lancaster and the Seigniory of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigniory of New Longueuil, thence along the north-western boundary of the Seigniory of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawa River, to ascend the said river into the Lake Temiscamingue, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada;

And whereas the point to be regarded as the head of Lake Temiscamingue had never been authoritatively determined, and in consequence that portion of the boundary line between the Provinces of Upper and Lower Canada, now respectively named

the Provinces of Ontario and Quebec, north of the said lake had never been defined; And whereas it was considered expedient by the Governments of the said Provinces of Ontario and Quebec, that the said undetermined portion of the said boundary line between the said Provinces should no longer continue uncertain, and it was, subject to ratification by the Legislatures of the said Provinces and by the Parliament of Canada, agreed between the Governments of the said Provinces that the point at the head of Lake Temiscamingue, from which the said boundary line shall run due north, should be determined in the following manner, that is to say:

(1.) That a line should be surveyed running due east from a monument planted on the east bank of the River Blanche, the position of which monument is, upon a map showing the proposed boundary, (a duplicate whereof, signed by the Honourable Richard William Scott, formerly Commissioner of Crown Lands of the Province of Ontario and the Honourable Pierre Fortin, formerly Commissioner of Crown Lands of the Province of Quebec, is filed in the Department of Crown Lands of the Province of Ontario) shown and marked with the letter H, and that the said due east line should be continued to the west bank of the River Quinze;

(2.) That the said line so surveyed should be divided into two equal parts, and that at the point of bisection a permanent monument should be planted;

(3.) That from the said point of bisection a line should be run due south through the mainland and through the island marked upon the said map as Island No. 2, until the said line intersects the southern boundary of the said island at the water's edge, and that the said point of intersection of the said line with the southerly boundary of the said Island No. 2, at the water's edge, should be the point at the head of Lake Temiscamingue from which the boundary line between the said Provinces of Ontario and Quebec should be run due north;

And whereas the Governments of the said Provinces of Ontario and Quebec have caused the said lines to be surveyed, and the said point determined upon the ground, and have also caused to be made a survey from a point on the middle of the Ottawa River, opposite the mouth of the Mattawan River, up the waters of the Ottawa River, into Lake Temiscamingue, and through the said Lake to the said point determined in manner aforesaid at the head of Lake Temiscamingue, and thence due north as far as it is deemed necessary to survey at the present time the said line northerly;

And whereas it is intended that a line indicating the boundary between the Provinces so ascertained as aforesaid, shall be marked and laid down upon a map made in duplicate, to be signed by the Commissioner of Crown Lands for the Province of Ontario and the Commissioner of Crown Lands for the Province of Quebec;

And whereas by chapter twenty-eight of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland,

passed in the Session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, and entitled "*An Act respecting the establishment of Provinces in the Dominion of Canada*," it is enacted that "the Parliament of Canada may, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution, or alteration of territory in relation to any Province affected thereby ;"

And whereas it is expedient that the said line so surveyed and laid down should be established as the boundary line between this Province and the Province of Quebec ;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Parliament of the Dominion of Canada, may establish the line between Ontario and Quebec.

1. In case the Legislature of the Province of Quebec also consents thereto, the Legislature of the Province of Ontario hereby consents that the Parliament of the Dominion of Canada do declare and establish the line to be marked, and laid down in manner aforesaid, and the continuation of the said line due north to the northerly limit of the said Provinces, as the boundary line between this Province and the Province of Quebec, whether the same increases, diminishes or otherwise alters the limits of this Province. 38 V. c. 5, s. 1.\*

## CHAPTER 4.

### An Act respecting the Northerly and Westerly Boundaries of the Province of Ontario.

Recital of arbitration proceedings taken to determine the northerly and westerly boundaries of the Province.—Preamble.

Consent of the Province to establish-

ment of such boundary by the Parliament of Canada, s. 1.

Provision for appointment of a new arbitrator for Ontario, in case of a vacancy, s. 2.

Preamble.

**W**HEREAS by chapter twenty-eight of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the Session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, and entitled "*An Act respecting the establishment of Provinces in the Dominion of Canada*," it is enacted that "the Parliament of Canada may from time to time, with the consent of the Legislature of any

\* The consent of the Legislature of Quebec was given by the Act of that Province, 38 V. c. 6, but no Act has yet been passed by the Parliament of Canada to establish the boundary line above referred to.

Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution, or alteration of territory in relation to any Province affected thereby ;”

And whereas the northerly and westerly boundaries of the Province of Ontario have never been determined ;

And whereas, subject to the approval of the Parliament of Canada and the Legislature of Ontario, it was agreed by the Governments of the Dominion of Canada and the Province of Ontario that the questions which have arisen concerning the said boundaries should be determined by reference to arbitration :

And whereas the Governor-General of Canada in Council, subject as aforesaid, named the Honourable Lemuel Allan Wilmot, formerly Lieutenant-Governor of the Province of New Brunswick, and the Lieutenant-Governor in Council of the Province of Ontario, subject as aforesaid, named the Honourable William Buell Richards, now Chief Justice of the Supreme Court of Canada, as arbitrators in respect of the said matters, and the two Governments also agreed, that the said Honourable Lemuel Allan Wilmot and the Honourable William Buell Richards shall choose a third person, not being a resident of Canada, to act in conjunction with them upon the said arbitration, and that the determination of a majority of the said arbitrators shall be final and conclusive as to the limits to be taken as and for such boundaries as aforesaid respectively :

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. The Legislature of the Province of Ontario consents that the Parliament of Canada may declare that the boundaries which by the award of the arbitrators aforesaid, or of any two of the arbitrators aforesaid, may be decided to be the northerly and westerly boundaries respectively of this Province, shall be declared to be the northerly and westerly boundaries thereof ; or in case the award shall be as to the westerly boundary alone, the same may be in like manner declared by the Parliament of Canada as aforesaid, and that the Parliament of Canada may thereby increase, diminish, or otherwise alter the northerly and westerly limits of the Province of Ontario, so that the same may be in accordance with the award. 38 V. c. 6, s. 1.

2. In case the arbitrator appointed by the Lieutenant-Governor should die or resign, or become incapable of exercising his said office, the Lieutenant-Governor in Council may appoint another in his place ; and in case either of the said other arbitrators should die or resign, or become incapable as aforesaid, the Lieutenant-Governor in Council may concur in any appointment which may be made in his place. 38 V. c. 6, s. 2.

Parliament of Canada may declare the boundaries which the arbitrators award to be the boundaries of the Province.

Appointment of new arbitrator in case of vacancy.

When this Act  
to take effect.

**3.** This Act shall not go into effect until the Lieutenant-Governor in Council has issued his proclamation in that behalf. 38  
V. c. 6, s. 3.

## CHAPTER 5.

### An Act respecting the Territorial Division of Ontario.

Existing divisions of Ontario continued, s. 1.	Unions of Counties, ss. 3, 4.
Counties, s. 1 (1-41).	Union of Cities with Counties for judicial purposes, s. 3.
Provisional County of Haliburton, s. 1 (42).	Holding of Courts in Counties, &c., s. 5.
Provisional Judicial District of Algoma, s. 1 (43).	Court Houses, Gaols, &c., existing property in, continued, s. 6.
Territorial Districts, s. 1 (44-46).	Limits of Townships on certain lakes and rivers, ss. 7-10.
Temporary Judicial District of Nipissing, s. 1 (47).	Islands, s. 11.
Express mention of towns, &c., not to exclude general provisions in cases of towns, &c., not mentioned, s. 2.	Formation of new Townships, ss. 12, 13.
	Annexation of gores of land to Township, s. 14.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Existing or-  
ganization  
continued.

**1.** The Territorial Division of Ontario into Counties and Districts shall continue as hereinafter set forth, and for municipal and judicial purposes such Counties, and for judicial purposes such Districts, shall respectively consist of the several Townships hereinafter mentioned, including in the said Townships, Counties and Districts the Towns and incorporated Villages situated within the limits of such Townships, Counties and Districts respectively, and including in certain of such Counties and Districts other lands as hereinafter mentioned. *See C. S. U. C. c. 3, s. 1.*

Brant

#### 1.—THE COUNTY OF BRANT

Shall consist of the Townships of—

- |                        |               |
|------------------------|---------------|
| 1. Brantford,          | 4. Oakland,   |
| 2. Burford,            | 5. Onondaga,  |
| 3. South Dumfries,     | 6. Tuscarora, |
| The City of Brantford, |               |
| And the Town of Paris. |               |

C. S. U. C. c. 3, s. 1 (26);  
40 V. c. 34.



## 2.—THE COUNTY OF BRUCE

Bruce.

Shall consist of the Townships of—

- |                     |                 |
|---------------------|-----------------|
| 1. Arran,           | 9. Eastnor,     |
| 2. Albemarle,       | 10. Elderslie,  |
| 3. Amabel,          | 11. Greenock,   |
| 4. Brant,           | 12. Huron,      |
| 5. Bruce,           | 13. Kincardine, |
| 6. Bury St. Edmund, | 14. Kinloss,    |
| 7. Carrick,         | 15. Lindsay,    |
| 8. Culross,         | 16. Saugeen,    |

Together with all that portion of the peninsular tract of land known as the Indian Reserve, and not included in the County of Grey, and the Islands in Lake Huron and the Georgian Bay contiguous to the said Reserve,

The Towns of..... 1. Kincardine.  
2. Walkerton (34 V. c. 69),

And the Villages of—

- |                |                 |
|----------------|-----------------|
| 1. Lucknow,    | 4. Southampton, |
| 2. Paisley,    | 5. Teeswater.   |
| 3. Port Elgin, |                 |

C. S. U. C. c. 3, s. 1 (29).

## 3.—THE COUNTY OF CARLETON

Carleton.

Shall consist of the Townships of—

- |                 |                 |
|-----------------|-----------------|
| 1. Fitzroy,     | 6. March,       |
| 2. Gloucester,  | 7. Marlborough, |
| 3. Goulburn,    | 8. Nepean,      |
| 4. Gower North, | 9. Osgoode,     |
| 5. Huntley,     | 10. Tarbolton,  |

The City of Ottawa,

And the Villages of..... 1. New Edinburgh (29-30 V.  
c. 81).

2. Richmond.

C. S. U. C. c. 3, s. 1 (5)

## 4.—THE COUNTY OF DUNDAS

Dundas.

Shall consist of the Townships of—

- |              |                   |
|--------------|-------------------|
| 1. Matilda,  | 3. Williamsburgh, |
| 2. Mountain, | 4. Winchester,    |

And the Villages of..... 1. Iroquois.

2. Morrisburgh.

C. S. U. C. c. 3, s. 1 (8).

## 5.—THE COUNTY OF DURHAM

Durham.

Shall consist of the Townships of—

- |                |                |
|----------------|----------------|
| 1. Cartwright, | 3. Clarke,     |
| 2. Cavan,      | 4. Darlington, |

5. Hope,  
The Towns of..... 1. Bowmanville,  
2. Port Hope,  
And the Village of Newcastle.

C. S. U. C. c. 3, s. 1 (17.)

Elgin.

## 6.—THE COUNTY OF ELGIN

Shall consist of the Townships of—

- |                                       |                  |
|---------------------------------------|------------------|
| 1. Aldborough,                        | 5. Malahide,     |
| 2. Bayham,                            | 6. Southwold,    |
| 3. Dorchester, South                  | 7. Yarmouth,     |
| 4. Dunwich,                           |                  |
| The Town of St. Thomas (23 V. c. 89), |                  |
| And the Villages of..... 1. Aylmer,   |                  |
|                                       | 2. Port Stanley, |
|                                       | 3. Vienna.       |

C. S. U. C. c. 3, s. 1 (35).

Essex.

## 7.—THE COUNTY OF ESSEX

Shall consist of the Townships of—

- |                |                               |
|----------------|-------------------------------|
| 1. Anderdon,   | 7. Pelée (31 V. c. 51),       |
| 2. Colchester, | 8. Rochester,                 |
| 3. Gosfield,   | 9. Sandwich East, } (23 V. c. |
| 4. Maidstone,  | 10. Sandwich West, } 96),     |
| 5. Malden,     | 11. Tilbury West,             |
| 6. Mersea,     |                               |

The Towns of..... 1. Amherstburgh,  
2. Sandwich,  
3. Windsor,

And the Villages of..... 1. Belle River,  
2. Leamington,

Except that the Township of Pelée shall continue to be separate, for municipal purposes, from the County of Essex.  
C. S. U. C. c. 3, s. 1 (34); 31 V. c. 51.

Frontenac.

## 8.—THE COUNTY OF FRONTENAC

Shall consist of the Townships of—

- |   |                                 |
|---|---------------------------------|
| 1. Barrie,  | 10. Loughborough,               |
| 2. Bedford,                                       | 11. Miller (23 V. c. 39, s. 2), |
| 3. Canonto, North, } (23 V.                       | 12. Olden,                      |
| 4. Canonto, South, } c. 39, s. 2),                | 13. Oso,                        |
| 5. Clarendon,                                     | 14. Palmerston,                 |
| 6. Hinchinbrooke,                                 | 15. Pittsburgh,                 |
| 7. Howe Island,                                   | 16. Portland,                   |
| 8. Kennebec,                                      | 17. Storrington,                |
| 9. Kingston,                                      | 18. Wolfe Island (including     |
| Simcoe Island, Horse Shoe Island and Mud Island). |                                 |
| The City of Kingston,                             |                                 |
| And the Villages of... 1. Garden Island,          |                                 |
|   | 2. Portsmouth.                  |

C. S. U. C. c. 3, s. 1 (11).

## 9.—THE COUNTY OF GLENGARRY

Glengarry.

Shall consist of the Townships of—

- |                     |               |
|---------------------|---------------|
| 1. Charlottenburgh, | 3. Lancaster, |
| 2. Kenyon,          | 4. Lochiel.   |
- C. S. U. C. c. 3. s. 1 (1).

## 10.—THE COUNTY OF GRENVILLE

Grenville.

Shall consist of the Townships of—

- |                  |                        |
|------------------|------------------------|
| 1. Augusta,      | 4. Oxford (on Rideau), |
| 2. Edwardsburgh, | 5. Wolford,            |
| 3. Gower, South, |                        |
- The Town of Prescott,  
And the Villages of...
- |                                |
|--------------------------------|
| 1. Kemptville,                 |
| 2. Merrickville (23 V. c. 91). |
- C. S. U. C. c. 3, s. 1 (9).

## 11.—THE COUNTY OF GREY

Grey.

Shall—subject to the provisions of the Act respecting the County of Dufferin, being chapter thirty-one of the Acts passed in the thirty-eighth year of Her Majesty's reign—consist of the Townships of—

- |                 |                    |
|-----------------|--------------------|
| 1. Artemesia,   | 10. Melancthon,    |
| 2. Bentinck,    | 11. Normanby,      |
| 3. Collingwood, | 12. Osprey,        |
| 4. Derby,       | 13. Proton,        |
| 5. Egremont,    | 14. Saint Vincent, |
| 6. Euphrasia,   | 15. Sarawak,       |
| 7. Glenelg,     | 16. Sullivan,      |
| 8. Holland,     | 17. Sydenham,      |
| 9. Keppel,      |                    |

Together with (exclusive of the Townships of Keppel and Sarawak) that portion of the peninsular tract of land known as the Indian Reserve, and situated between lines drawn northward from the north-east angle of Arran and the north-west angle of Derby, until they respectively strike Colpoy's Bay, on the east side of the Indian Village, and the waters of the Georgian Bay, and the Islands contiguous thereto.

- And the Towns of...
- |  |
|--|
| 1. Durham (35 V. c. 42),               |
| 2. Meaford (37 V. c. 68; 39 V. c. 43), |
| 3. Owen Sound.                         |
- C. S. U. C. c. 3, s. 1 (28).

## 12.—THE COUNTY OF HALDIMAND

Haldimand.

Shall consist of the Townships of—

- |                |                   |
|----------------|-------------------|
| 1. Canborough, | 2. Cayuga, North, |
|----------------|-------------------|

- |                         |                |
|-------------------------|----------------|
| 3. Cayuga, South,       | 7. Rainham,    |
| 4. Dunn,                | 8. Seneca,     |
| 5. Moulton,             | 9. Sherbrooke, |
| 6. Oneida,              | 10. Walpole,   |
| And the Villages of.... | 1. Caledonia,  |
|                         | 2. Cayuga,     |
|                         | 3. Dunville.   |

C. S. U. C. c. 3, s. (39).

Halton.

## 13.—THE COUNTY OF HALTON

Shall consist of the Townships of—

- |                          |                |
|--------------------------|----------------|
| 1. Esquesing,            | 3. Nelson,     |
| 2. Nassagaweya,          | 4. Trafalgar,  |
| The Towns of.....        | 1. Milton,     |
|                          | 2. Oakville,   |
| And the Villages of..... | 1. Acton,      |
|                          | 2. Burlington, |
|                          | 3. Georgetown, |

C. S. U. C. c. 3, s. 1 (24).

Hastings.

## 14.—THE COUNTY OF HASTINGS

Shall consist of the Townships of—

- |                 |                 |
|-----------------|-----------------|
| 1. Bangor,      | 13. Madoc,      |
| 2. Carlow,      | 14. Marmora,    |
| 3. Cashel,      | 15. Mayo,       |
| 4. Dungannon,   | 16. McClure,    |
| 5. Elzevir,     | 17. Monteagle,  |
| 6. Faraday,     | 18. Rawdon,     |
| 7. Grimsthorpe, | 19. Sidney,     |
| 8. Herschel,    | 20. Thurlow,    |
| 9. Hungerford,  | 21. Tudor,      |
| 10. Huntingdon, | 22. Tyendinaga, |
| 11. Lake,       | 23. Wicklow,    |
| 12. Limerick,   | 24. Wollaston,  |

The City of Belleville,

- And the Villages of.....
- |               |
|---------------|
| 1. Millpoint, |
| 2. Stirling,  |
| 3. Trenton.   |

C. S. U. C. c. 3, s. 1 (15).

40 V. c. 33.

Huron.

## 15.—THE COUNTY OF HURON

Shall consist of the Townships of—

- |              |                                |
|--------------|--------------------------------|
| 1. Ashfield, | 9. Morris,                     |
| 2. Colborne, | 10. Stanley,                   |
| 3. Goderich, | 11. Stephen,                   |
| 4. Grey,     | 12. Tuckersmith,               |
| 5. Hay,      | 13. Turnberry,                 |
| 6. Howick,   | 14. Usborne,                   |
| 7. Hullett,  | 15. Wawanosh, East, } (29-30V. |
| 8. McKillop, | 16. Wawanosh, West } c. 82).   |

The Towns of .....1. Clinton (38 V. c. 37),  
2 Goderich,  
3. Seaforth.

And the Villages of—

1. Bayfield (39 V. c. 40).
2. Blyth,
3. Brussels,
4. Exeter (36 V. c. 54).
5. Wingham (37 V. c. 70),
6. Wroxeter (38 V. c. 35),  
C. S. U. C. c. 3, s. 1 (30).

## 16.—THE COUNTY OF KENT

Kent.

Shall consist of the Townships of—

1. Camden,
2. Chatham,
3. Dover, East,
4. Dover, West,
5. Harwich,
6. Howard,
7. Orford,
8. Raleigh,
9. Romney,
10. Tilbury, East,
11. Zone,

The Towns of .....1. Bothwell(29-30 V. c. 80),  
2. Chatham,

And the Villages of—

1. Blenheim,
2. Dresden,
3. Ridgetown,
4. Thamesville,
5. Wallaceburg.

C. S. U. C. c. 3, s. 1 (33).

## 17.—THE COUNTY OF LAMBTON

Lambton.

Shall consist of the Townships of—

1. Bosanquet,
2. Brooke,
3. Dawn } (12 V. c. 79,
4. Euphenia. } s. 2).
5. Enniskillen,
6. Moore,
7. Plympton,
8. Sarnia,
9. Sombra, including Walpole Island, St. Anne's Island, and the other Islands at the mouth of the River St. Clair,
10. Warwick,

The Towns of..... 1. Sarnia,  
2. Petrolia.

And the Villages of—

1. Forest,  
2. Oil Springs,  
3. Watford,  
4. Wyoming.  
C. S. U. C. c. 3, s. 1 (32).

## 18.—THE COUNTY OF LANARK

Lanark

Shall consist of the Townships of—

- |                    |                        |
|--------------------|------------------------|
| 1. Bathurst,       | 8. Lanark,             |
| 2. Beckwith,       | 9. Lavant,             |
| 3. Burgess, North, | 10. Montague,          |
| 4. Dalhousie,      | 11. Pakenham,          |
| 5. Darling,        | 12. Ramsay,            |
| 6. Drummond,       | 13. Sherbrooke, North, |
| 7. Elmsley, North, | 14. Sherbrooke, South, |



The Town of Perth,  
And the Villages of—

- |                    |                             |
|--------------------|-----------------------------|
| 1. Almonte,        | 3. Lanark (25 V. c. 36),    |
| 2. Carleton Place, | 4. Smith's Falls.           |
|                    | C. S. U. C. c. 3, s. 1 (7). |

Leeds.

## 19.—THE COUNTY OF LEEDS

Shall consist of the Townships of—

- |                     |                               |
|---------------------|-------------------------------|
| 1. Bastard,         | 8. Kitley,                    |
| 2. Burgess, South,  | 9. Front of Leeds and Lans-   |
| 3. Crosby, North,   | downe,                        |
| 4. Crosby, South,   | 10. Rear of Leeds and Lans-   |
| 5. Elizabethtown,   | downe,                        |
| 6. Elmsley, South,  | 11. Front of Yonge,           |
| 7. Front of Escott, | 12. Rear of Yonge and Escott, |

The Town of Brockville,

And the Villages of .....

- |                              |
|------------------------------|
| 1. Gananoque,                |
| 2. Newboro' (39 V. c. 44).   |
| C. S. U. C. c. 3, s. 1 (10). |

Lennox and  
Addington

## 20.—THE COUNTY OF LENNOX AND ADDINGTON

Shall consist of the Townships of—

- |                                 |                                   |
|---------------------------------|-----------------------------------|
| 1. Abinger (23 V. c. 39, s. 3), | 8. Effingham (23 V. c. 39, s. 3), |
| 2. Adolphustown,                | 9. Ernestown,                     |
| 3. Amherst Island,              | 10. Fredericksburgh, North,       |
| 4. Anglesea,                    | 11. Fredericksburgh, South,       |
| 5. Ashby (23 V. c. 39, s. 3),   | 12. Kaladar,                      |
| 6. Camden,                      | 13. Richmond,                     |
| 7. Denbigh (23 V. c. 39, s. 3), | 14. Sheffield,                    |

The Town of Napanee (27-8 V. c. 78),

And the Villages of .....

- |              |
|--------------|
| 1. Bath,     |
| 2. Newburgh. |

C. S. U. C. c. 3, s. 1 (12, 13); 23 V. c. 39.

Lincoln.

## 21.—THE COUNTY OF LINCOLN

Shall consist of the Townships of—

- |                  |             |
|------------------|-------------|
| 1. Caistor,      | 5. Grimsby, |
| 2. Clinton,      | 6. Louth,   |
| 3. Gainsborough, | 7. Niagara, |
| 4. Grantham,     |             |

The City of St. Catharines (39 V. c. 46),

The Town of Niagara,

And the Villages of.....

- |                            |
|----------------------------|
| 1. Grimsby (39 V. c. 41),  |
| 2. Merriton (37 V. c. 69), |
| 3. Port Dalhousie,         |

C. S. U. C. c. 3, s. 1 (41).

Middlesex.

## 22.—THE COUNTY OF MIDDLESEX

Shall consist of the Townships of—

- |              |                            |
|--------------|----------------------------|
| 1. Adelaide, | 2. Biddulph (25 V. c. 28), |
|--------------|----------------------------|

- |  |                     |
|--|---------------------|
| 3. Caradoc,  | 10. Metcalfe,       |
| 4. Delaware,   | 11. Mosa,           |
| 5. Dorchester, North,  | 12. Nissouri West,  |
| 6. Ekfrid,   | 13. Westminster,    |
| 7. Lobo,   | 14. Williams, East, |
| 8. London,   | 15. Williams, West, |
| 9. McGillivray (25 V. c. 28),<br>The City of London,<br>The Town of Strathroy,<br>And the Villages of— |                     |
| 1. Ailsa Craig (38 V. c. 32),  | 5. Newbury,         |
| 2. Glencoe,  | 6. Parkhill,        |
| 3. London East,  | 7. Petersville,     |
| 4. Lucan,  | 8. Wardsville.      |

C. S. U. C. c. 3, s. 1 (36).

## 23.—THE COUNTY OF NORFOLK

Norfolk.

Shall consist of the Townships of—

- |                    |                                       |
|--------------------|---------------------------------------|
| 1. Charlotteville, | 5. Walsingham (including Long Point), |
| 2. Houghton,       | 6. Windham,                           |
| 3. Middleton,      | 7. Woodhouse,                         |
| 4. Townsend,       |                                       |

And the Village of Simcoe.

C. S. U. C. c. 3, s. 1 (37).

## 24.—THE COUNTY OF NORTHUMBERLAND

Northumberland.

Shall consist of the Townships of—

- |               |                    |
|---------------|--------------------|
| 1. Alnwick,   | 6. South Monaghan, |
| 2. Brighton,  | 7. Murray,         |
| 3. Cramahe,   | 8. Percy,          |
| 4. Haldimand, | 9. Seymour,        |
| 5. Hamilton,  |                    |

The Town of Cobourg,

And the Villages of—

- |                  |                            |
|------------------|----------------------------|
| 1. Brighton,     | 3. Colborne,               |
| 2. Campbellford, | 4. Hastings (37 V. c. 37). |

C. S. U. C. c. 3, s. 1 (16).

## 25.—THE COUNTY OF ONTARIO

Ontario.

Shall consist of the Townships of—

- |               |                                      |
|---------------|--------------------------------------|
| 1. Brock,     | 7. Scugog,                           |
| 2. Mara,      | 8. Thorah (including Canise Island), |
| 3. Pickering, | 9. Uxbridge,                         |
| 4. Rama,      | 10. Whitby,                          |
| 5. Reach,     | 11. East Whitby,                     |
| 6. Scott,     |                                      |

The Town of Whitby,

- And the Villages of..... 1. Oshawa,  
 2. Port Perry,  
 3. Uxbridge,  
 C. S. U. C. c. 3, s. 1 (23);  
 39 V. c. 7, s. 2, *Sched.*  
 B.

Oxford.

## 26.—THE COUNTY OF OXFORD

Shall consist of the Townships of—

- |                    |                   |
|--------------------|-------------------|
| 1. Blandford,      | 7. Oxford, North, |
| 2. Blenheim,       | 8. Oxford, East,  |
| 3. Dereham,        | 9. Oxford, West,  |
| 4. Nissouri, East, | 10. Zorra, East,  |
| 5. North Norwich,  | 11. Zorra, West,  |
| 6. South Norwich,  |                   |

- The Towns of..... 1. Ingersoll (23 V. c. 88),  
 2. Tilsonburg (35 V. c. 41),  
 3. Woodstock,

- And the Villages of..... 1. Embro,  
 2. Norwich.  
 C. S. U. C. c. 3, s. 1 (38).

Peel.

## 27.—THE COUNTY OF PEELE

Shall consist of the Townships of—

- |                  |                  |
|------------------|------------------|
| 1. Albion,       | 4. Toronto,      |
| 2. Caledon,      | 5. Toronto Gore, |
| 3. Chinguacousy, |                  |

The Town of Brampton (36 V. c. 51),

- And the Villages of..... 1. Bolton,  
 2. Streetsville.

C. S. U. C. c. 3, s. 1 (22).

Perth.

## 28.—THE COUNTY OF PERTH

Shall consist of the Townships of—

- |  |                 |
|--|-----------------|
| 1. Blanchard,                                | 6. Elma,        |
| 2. Downie (including the Gore<br>of Downie), | 7. Fullarton,   |
| 3. Easthope, North,                          | 8. Hibbert,     |
| 4. Easthope, South,                          | 9. Logan,       |
| 5. Ellice,                                   | 10. Mornington, |
|  | 11. Wallace,    |

The Towns of ..... 1. Listowel (38 V. c. 36),

2. Mitchell,  
 3. St. Mary's,  
 4. Stratford,

C. S. U. C. c. 3, s. 1 (31)

Peterborough.

## 29.—THE COUNTY OF PETERBOROUGH

Shall consist of the Townships of—

- |                |              |
|----------------|--------------|
| 1. Anstruther, | 2. Asphodel, |
|----------------|--------------|

- |               |                     |
|---------------|---------------------|
| 3. Belmont,   | 10. Galway,         |
| 4. Burleigh,  | 11. Harvey,         |
| 5. Cavendish, | 12. Methuen,        |
| 6. Chandos,   | 13. Monaghan North, |
| 7. Douro,     | 14. Otonabee,       |
| 8. Dummer,    | 15. Smith,          |
| 9. Ennismore, |                     |

The Town of Peterborough (*See* 36 V. c.

57),

And the Villages of... . 1. Ashburnham,

2. Lakefield.

C. S. U. C. c. 3, s. 1 (18); 37

V. c. 65.

### 30.—THE COUNTY OF PRESCOTT

Prescott.

Shall consist of the Townships of—

- |                      |                        |
|----------------------|------------------------|
| 1. Alfred,           | 5. Longueuil,          |
| 2. Caledonia,        | 6. Plantagenet, North, |
| 3. Hawkesbury, East, | 7. Plantagenet, South, |
| 4. Hawkesbury, West, |                        |

The Villages of ..... 1. Hawkesbury,

2. L'Orignal (39 V. c. 42).

C. S. U. C. c. 3, s. 1 (3).

### 31.—THE COUNTY OF PRINCE EDWARD

Prince Ed-  
ward.

Shall consist of the Townships of—

- |                  |                                 |
|------------------|---------------------------------|
| 1. Ameliasburgh, | 5. Marysburgh, North, } (33 V.  |
| 2. Athol,        | 6. Marysburgh, South, } c. 63), |
| 3. Hallowell,    | 7. Sophiasburgh,                |
| 4. Hillier,      |                                 |

The Town of Picton,

And the Village of Wellington.

C. S. U. C. c. 3, s. (14).

### 32.—THE COUNTY OF RENFREW

Renfrew.

Shall consist of the Townships of—

- |                                   |                                  |
|-----------------------------------|----------------------------------|
| 1. Admaston,                      | 16. Lyndoch (23 V. c. 39, s. 4), |
| 2. Algona North,                  | 17. Matawatchan,                 |
| 3. Algona South,                  | 18. McKay,                       |
| 4. Alice,                         | 19. McNab,                       |
| 5. Bagot,                         | 20. Pembroke,                    |
| 6. Blithfield,                    | 21. Petawawa,                    |
| 7. Bromley,                       | 22. Radcliffe, } (23 V. c. 39.   |
| 8. Brougham,                      | 23. Raglan, } s. 4,              |
| 9. Brudenell (23 V. c. 39, s. 4), | 24. Rolph,                       |
| 10. Buchanan,                     | 25. Ross,                        |
| 11. Fraser,                       | 26. Sebastopol,                  |
| 12. Grattan,                      | 27. Stafford,                    |
| 13. Griffith,                     | 28. Westmeath,                   |
| 14. Head,                         | 29. Wilberforce,                 |
| 15. Horton,                       | 30. Wylie,                       |

- The Villages of ..... 1. Arnprior (25 V. c. 37),  
 2. Pembroke,  
 3. Renfrew.  
 C. S. U. C. c. 3, s. 1 (6);  
 23 V. c. 39, s. 4.

Russell.

## 33.—THE COUNTY OF RUSSELL

Shall consist of the Townships of—

- |               |                |
|---------------|----------------|
| 1. Cambridge, | 3. Cumberland, |
| 2. Clarence,  | 4. Russell.    |
- C. S. U. C. c. 3, s. 1 (4).

Simcoe.

## 34.—THE COUNTY OF SIMCOE

Shall—subject to the provisions of the Act respecting the County of Dufferin, being chapter thirty-one of the Acts passed in the thirty-eighth year of Her Majesty's reign—consist of the Townships of—

- |                      |                  |
|----------------------|------------------|
| 1. Adjala,           | 10. Nottawasaga, |
| 2. Essa,             | 11. Orillia,     |
| 3. Flos,             | 12. Oro,         |
| 4. West Gwillimbury, | 13. Sunnidale,   |
| 5. Innisfil,         | 14. Tay,         |
| 6. Matchedash,       | 15. Tecumseth,   |
| 7. Medonte,          | 16. Tiny.        |
| 8. Mono,             | 17. Tosorontio,  |
| 9. Mulmur,           | 18. Vespra,      |

Together with the tract of land bounded on the east by the line forming the easterly boundary of the Townships of Morrison, Muskoka, Monck, Watt and Cardwell, produced northerly to French River; on the north by French River; on the west by the waters of the Georgian Bay; and on the south by the River Severn and the Township of Rama, including the Islands in Lake Simcoe and the Georgian Bay, lying wholly or for the most part opposite to the said County of Simcoe, or any part thereof, and contiguous thereto;

- The Towns of.....1. Barrie,  
 2. Collingwood (see 36 V. c. 53),  
 3. Orillia,

And the Villages of—

- |              |                     |
|--------------|---------------------|
| 1. Alliston, | 3. Penetanguishene, |
| 2. Bradford, | 4. Stayner.         |

Territory included in Muskoka or Parry Sound by Rev. Stat. c. 7, to continue to form part of those districts

But such portions of the said County of Simcoe as are, by *The Act respecting the Territorial Districts of Muskoka, Parry Sound, and Thunder Bay*, included within the limits of the Territorial Districts of Muskoka or Parry Sound, shall, for the purposes of the said Act, continue to form part of the said Territorial Districts of Muskoka and Parry Sound respectively, and shall, for all judicial purposes not provided for by said Act, form part of the County of Simcoe. See C. S. U. C. c. 3, s. 1 (20); 23 V. c. 40, s. 3; 31 V. c. 35; 33 V. c. 24; 40 V. c. 24, s. 2.



## 35.—THE COUNTY OF STORMONT

Stormont.

Shall consist of the Townships of—

- |              |                |
|--------------|----------------|
| 1. Cornwall, | 3. Osnabruck,  |
| 2. Finch,    | 4. Roxborough, |
- And the Town of Cornwall.

C. S. U. C. c. 3, s. 1 (2).

## 36.—THE COUNTY OF VICTORIA

Victoria.

Shall consist of the Townships of—

- |               |                 |
|---------------|-----------------|
| 1. Bexley,    | 12. Macaulay,   |
| 2. Brunel,    | 13. Mariposa,   |
| 3. Carden,    | 14. McLean,     |
| 4. Dalton,    | 15. Oakley,     |
| 5. Digby,     | 16. Ops,        |
| 6. Draper,    | 17. Ridout,     |
| 7. Eldon,     | 18. Ryde,       |
| 8. Emily,     | 19. Somerville, |
| 9. Fenelon,   | 20. Stephenson, |
| 10. Laxton,   | 21. Verulam,    |
| 11. Longford, |                 |

The Town of Lindsay,

And the Villages of...

1. Bracebridge,
2. Fenelon Falls,
3. Omemee.

But such portions of the said County of Victoria as are, by *The Act respecting the Territorial Districts of Muskoka, Parry Sound and Thunder Bay*, included within the limits of the Territorial District of Muskoka, shall, for the purposes of the said Act, continue to form part of the said District, and shall, for all judicial purposes not provided by said Act, form part of the County of Simcoe; and for judicial purposes not provided for by *The Act respecting the Provisional County of Haliburton*, the said Provisional County shall continue to be attached to and form part of the County of Victoria. See C. S. U. C. c. 3, s. 1 (19); 31 V. c. 35; 37 V. c. 65; 40 V. c. 24, s. 2.

Certain townships, &c., included in Muskoka by Rev. Stat. c. 7, to continue to form part of Muskoka and Simcoe for certain judicial purposes.

## 37.—THE COUNTY OF WATERLOO

Waterloo.

Shall consist of the Townships of—

- |                    |              |
|--------------------|--------------|
| 1. North Dumfries, | 4. Wilmot,   |
| 2. Waterloo,       | 5. Woolwich. |
| 3. Wellesley,      |              |

The Towns of.....

1. Berlin,
2. Galt,
3. Waterloo (39 V. c. 45).

And the Villages of—

1. Hespeler,
2. New Hamburg (see 23 V. c. 92),
3. Preston,

C. S. U. C. c. 3, s. 1 (25).

Welland.

## 38.—THE COUNTY OF WELLAND

Shall consist of the Townships of—

- |                   |                           |
|-------------------|---------------------------|
| 1. Bertie,        | 5. Stamford,              |
| 2. Crowland,      | 6. Thorold,               |
| 3. Humberstone,   | 7. Wainfleet,             |
| 4. Pelham,        | 8. Willoughby,            |
| The Towns of..... | 1. Clifton,               |
|                   | 2. Thorold (38 V. c. 34), |

And the Villages of—

- |               |                              |
|---------------|------------------------------|
| 1. Chippewa,  | 3. Port Colborne,            |
| 2. Fort Erie, | 4. Welland.                  |
|               | C. S. U. C. c. 3, s. 1 (40). |

Wellington.

## 39.—THE COUNTY OF WELLINGTON.

Shall—subject to the provisions of the Act respecting the County of Dufferin, being chapter thirty-one of the Acts passed in the thirty-eighth year of Her Majesty's reign, consist of the Townships of—

- |                              |                               |
|------------------------------|-------------------------------|
| 1. Amaranth,                 | 8. Luther,                    |
| 2. Arthur,                   | 9. Maryborough,               |
| 3. Eramosa                   | 10. Minto,                    |
| 4. Erin,                     | 11. Nichol,                   |
| 5. Garafraxa, East, } 32 V.  | 12. Peel,                     |
| 6. Garafraxa, West, } c. 13. | 13. Pilkington,               |
| 7. Guelph,                   | 14. Puslinch,                 |
| The Towns of .....           | 1. Guelph,                    |
|                              | 2. Orangeville (36 V. c. 55), |
|                              | 3. Palmerston (38 V. c. 33),  |

And the Villages of—

- |                            |                  |
|----------------------------|------------------|
| 1. Arthur (39 V. c. 39),   | 5. Fergus,       |
| 2. Clifford (37 V. c. 66), | 6. Harriston,    |
| 3. Drayton,                | 7. Mount Forest. |
| 4. Elora,                  |                  |

C. S. U. C. c. 3, s. 1 (27).

Wentworth.

## 40.—THE COUNTY OF WENTWORTH

Shall consist of the Townships of—

- |              |                       |
|--------------|-----------------------|
| 1. Ancaster, | 5. Flamborough, East, |
| 2. Barton,   | 6. Flamborough, West, |
| 3. Beverly,  | 7. Glanford,          |
| 4. Binbrook, | 8. Saltfleet,         |

The City of Hamilton

And the Town of Dundas.

C. S. U. C. c. 3, s. 1 (42).

York.

## 41.—THE COUNTY OF YORK

Shall consist of the Townships of

- |               |              |
|---------------|--------------|
| 1. Etobicoke, | 2. Georgina, |
|---------------|--------------|

- |                        |                 |
|------------------------|-----------------|
| 3. Gwillimbury, East,  | 7. Scarborough, |
| 4. Gwillimbury, North, | 8. Vaughan,     |
| 5. King,               | 9. Whitchurch,  |
| 6. Markham,            | 10. York,       |

The City of Toronto,  
And the Villages of—

- |                     |                   |
|---------------------|-------------------|
| 1. Aurora,          | 4. Newmarket,     |
| 2. Holland Landing, | 5. Richmond Hill, |
| 3. Markham,         | 6. Yorkville.     |

C. S. U. C. c. 3, s. 1 (21).

#### 42.—THE PROVISIONAL COUNTY OF HALIBURTON Haliburton.

Shall consist of the Townships of—

- |               |                  |
|---------------|------------------|
| 1. Anson,     | 13. Hindon,      |
| 2. Bruton,    | 14. Lawrence,    |
| 3. Cardiff,   | 15. Livingstone, |
| 4. Clyde,     | 16. Lutterworth, |
| 5. Dudley,    | 17. McClintock,  |
| 6. Dysart,    | 18. Minden,      |
| 7. Eyre,      | 19. Monmouth,    |
| 8. Glamorgan, | 20. Nightingale, |
| 9. Guilford,  | 21. Sherborne,   |
| 10. Harburn,  | 22. Snowdon,     |
| 11. Harcourt, | 23. Stanhope.    |
| 12. Havelock, |                  |

But for judicial purposes not provided for by chapter six of the Revised Statutes of Ontario, the said Provisional County shall continue to be united to and form part of the County of Victoria. United to Victoria for certain judicial purposes.  
*See 37 V. c. 65; Proclamations of 6th June and 4th July, 1875.*

#### 43.—THE PROVISIONAL JUDICIAL DISTRICT OF Algoma. ALGOMA

Shall consist of the Townships of—

- |                |                    |
|----------------|--------------------|
| 1. Albert,     | 17. Dennis,        |
| 2. Anderson,   | 18. Dorion,        |
| 3. Archibald,  | 19. Esten,         |
| 4. Assiginack, | 20. Fenwick,       |
| 5. Awenge,     | 21. Fisher,        |
| 6. Aweres,     | 22. Gladstone,     |
| 7. Baldwin,    | 23. Gough,         |
| 8. Bidwell,    | 24. Hallam,        |
| 9. Billings,   | 25. Haviland,      |
| 10. Blak.,     | 26. Herrick,       |
| 11. Bright,    | 27. Homer,         |
| 12. Byron,     | 28. Howland,       |
| 13. Carlyle,   | 29. Humboldt,      |
| 14. Chesley,   | 30. Jarvis,        |
| 15. Cobden,    | 31. Joseph Island, |
| 16. Crooks,    | 32. Kars,          |

- |                  |                  |
|------------------|------------------|
| 33. Korah,       | 53. Plummer,     |
| 34. Lefroy,      | 54. Prince,      |
| 35. Lewis,       | 55. Rose,        |
| 36. Ley,         | 56. Rutherford,  |
| 37. Macdonald,   | 57. Salter,      |
| 38. May,         | 58. Sandfield,   |
| 39. McGregor,    | 59. Shakespeare, |
| 40. McIntyre,    | 60. Shedden,     |
| 41. McTavish,    | 61. Sheguiandah, |
| 42. Merritt,     | 62. Sibley,      |
| 43. Neebing,     | 63. Spragge,     |
| 44. Neepigon,    | 64. Tarentorus,  |
| 45. Oliver,      | 65. Tehkumah,    |
| 46. Paipoonge,   | 66. Tennyson,    |
| 47. Palmer,      | 67. Thompson,    |
| 48. Pardee,      | 68. Tilley,      |
| 49. Parke,       | 69. Tupper,      |
| 50. Patton,      | 70. Vankoughnet, |
| 51. Pennefather, | 71. Victoria,    |
| 52. Pic,         |                  |

Together with all the remaining territory included within the following limits:—Commencing on the north shore of the Georgian Bay of Lake Huron at the most westerly mouth of French River; thence due north to the northerly limit of the Province; thence along the said northerly limit of the Province westerly to the westerly limit thereof; thence along the said westerly limit of the Province southerly to the southerly limit thereof; thence along the said southerly limit of the Province, easterly to a point in Lake Huron opposite the southern extremity of the Great Manitoulin Island; thence easterly and north-easterly, so as to include all the Islands in Lake Huron not within the settled limits of any County or District, to the place of beginning.

Portions included within Thunder Bay by Rev. Stat. c. 7, to continue to form part of Thunder Bay for certain purposes.

But such portions of the said District of Algoma as are, by *The Act respecting the Territorial Districts of Muskoka, Parry Sound and Thunder Bay*, included within the limits of the Territorial District of Thunder Bay, shall for the purposes of the said Act continue to form part of the said Territorial District of Thunder Bay. *See Proclamation of 27th August, 1859; 34 V. c. 4; 36 V. c. 49.*

Muskoka.

#### 44.—THE TERRITORIAL DISTRICT OF MUSKOKA

Shall consist of the Townships of—

- |              |               |
|--------------|---------------|
| 1. Brunel,   | 7. McLean,    |
| 2. Cardwell, | 8. Medora,    |
| 3. Chaffey,  | 9. Monck,     |
| 4. Draper,   | 10. Morrison, |
| 5. Franklin, | 11. Muskoka,  |
| 6. Macaulay, | 12. Oakley,   |

- |                 |              |
|-----------------|--------------|
| 13. Ridout,     | 16. Stisted, |
| 14. Ryde,       | 17. Watt,    |
| 15. Stephenson, | 18. Wood,    |

And the Village of Bracebridge.

Together with the remaining territory lying within the limits of the said District as described in *The Act respecting the Territorial Districts of Muskoka, Parry Sound and Thunder Bay*, being chapter seven of the Revised Statutes of Ontario. Rev. Stat. c. 7, s. 1.

But for all judicial purposes not provided for by *The Act respecting the Territorial Districts of Muskoka, Parry Sound and Thunder Bay*, the said District shall continue to form part of the County of Simcoe. 23 V. c. 40, s. 3; 31 V. c. 35; 36 V. c. 49, s. 11; 39 V. c. 7, s. 17; 40 V. c. 24, s. 2. District of Muskoka to form part of Simcoe for judicial purposes not provided for by Rev. Stat. c. 7.

#### 45.—THE TERRITORIAL DISTRICT OF PARRY SOUND

Parry Sound.

Shall consist of the Townships of—

- |               |                 |
|---------------|-----------------|
| 1. Armour,    | 17. Machar,     |
| 2. Blair,     | 18. McDougall,  |
| 3. Brown,     | 19. McKellar,   |
| 4. Carling,   | 20. McKenzie,   |
| 5. Chapman,   | 21. McMurrich,  |
| 6. Christie,  | 22. Monteith,   |
| 7. Conger,    | 23. Mowat,      |
| 8. Cowper,    | 24. Nipissing,  |
| 9. Croft,     | 25. Perry,      |
| 10. Ferguson, | 26. Pringle,    |
| 11. Ferrie,   | 27. Ryerson,    |
| 12. Foley,    | 28. Sinclair,   |
| 13. Gurd,     | 29. Spence,     |
| 14. Hagerman, | 30. Strong,     |
| 15. Humphrey, | 31. Wallbridge, |
| 16. Lount,    | 32. Wilson,     |

Together with the remaining territory lying within the limits of the said District, as described in *The Act respecting the Territorial Districts of Muskoka, Parry Sound and Thunder Bay*, being chapter seven of the Revised Statutes of Ontario. Rev. Stat. c. 7, s. 2.

But for all judicial purposes not provided for by the said Act, the said District shall continue to form part of the County of Simcoe. See 33 V. c. 24; *Proclamations of* 21st March, 1870, and 1st Jan. 1873; 39 V. c. 7, s. 16; 40 V. c. 24, s. 2. District of Parry Sound to form part of Simcoe for judicial purposes not provided for by Rev. Stat. c. 7.

#### 46.—THE TERRITORIAL DISTRICT OF THUNDER BAY

Thunder Bay.

Shall consist of the Townships of—

- |           |            |
|-----------|------------|
| 1. Blake, | 2. Crooks, |
|-----------|------------|



- |              |                |
|--------------|----------------|
| 3. Dorion,   | 8. Neepigon,   |
| 4. McGregor, | 9. Oliver,     |
| 5. McIntyre, | 10. Paipoonge, |
| 6. McTavish, | 11. Pardee,    |
| 7. Neebing,  | 12. Sibley,    |

Rev. Stat. c. 7,  
s. 3.

Together with the remaining territory included in the said District, as described in *The Act respecting the Territorial Districts of Muskoka, Parry Sound and Thunder Bay*, being chapter seven of the Revised Statutes of Ontario.

To form part  
of Algoma for  
certain judicial  
purposes.

But for all judicial purposes not provided for by the said Act, the said Townships and territory shall continue to form part of the District of Algoma. See 34 V. c. 4; *Proclamation* of 1st June, 1871; 40 V. c. 24, s. 2.

Nipissing.

#### 47.—THE TEMPORARY JUDICIAL DISTRICT OF NIPISSING

Shall consist of the Townships of—

- |                |                |
|----------------|----------------|
| 1. Airy,       | 11. Maria,     |
| 2. Baldwin,    | 12. Mattawan,  |
| 3. Burns,      | 13. Murchison, |
| 4. Chewett,    | 14. Nipissing, |
| 5. Clara,      | 15. Papineau,  |
| 6. Collins,    | 16. Richards,  |
| 7. Hagarty,    | 17. Robinson,  |
| 8. Jones,      | 18. Sabine,    |
| 9. Lafontaine, | 19. Sherwood,  |
| 10. Lyell,     |                |

Together with all the remaining territory included within the following limits:—Commencing on the north shore of the Georgian Bay of Lake Huron at the most westerly mouth of French River; thence due north to the northerly limit of the Province; thence along the said northerly limit of the Province easterly to the boundary between Ontario and Quebec; thence along the said boundary between Ontario and Quebec southerly and south-easterly to the south-west limit of the County of Renfrew; thence along the said south-west limit of the County of Renfrew south-easterly to the north-west limit of the Township of Brudenell; thence along the north-west limits of the Townships of Brudenell, Radcliffe, Bangor, Wicklow and McClure to the north-east limit of the Township of Clyde; thence northerly along the north-east limits of the Townships of Clyde and Nightingale, and along the north-west limits of the Townships of Nightingale, Lawrence, Livingstone, and McClintock to the north-east limit of the Township of Franklin; thence north-westerly along the line surveyed for the continuation of the Bobcaygeon road to the middle of the main channel of Lake Nipis-

sing; thence westerly along the middle of the main channel of said lake, and along the middle of the main channel of French River to the Georgian Bay of Lake Huron; thence along the shore of the said Bay westerly to the place of beginning. *See Proclamation of 17th April, 1858; 31 V. c. 35; 33 V. c. 24; 37 V. c. 65. 39 V. c. 7, s. 17.*

2. The express mention herein of certain Towns and Villages as being included in certain Counties in which they would have been included without such express mention, under the general provisions in that behalf herein contained, shall not prevent the application of such provisions to the cases of Towns and Villages not expressly mentioned. 23 V. c. 40, s. 2.

Express mention of certain towns or villages as included in any county not to exclude others not mentioned but within its limits.

#### UNITED COUNTIES, &C.

3. For municipal, judicial and all purposes not otherwise provided for by law, the following Counties, already united, shall continue to form Unions of Counties, that is to say:

United counties.

1. Stormont, Dundas and Glengarry;
2. Leeds and Grenville;
3. Northumberland and Durham;
4. Prescott and Russell;

*See C. S. U. C. c. 3, s. 2; 23 V. c. 39; 24 V. cc. 50 & 51; 25 V. c. 27; 26 V. c. 10; 29 V. cc. 65 & 66; 29-30 V. c. 71. Proclamation of 30th Sept., 1864.*

And for judicial purposes the Cities of—

- |              |                    |
|--------------|--------------------|
| 1. Toronto,  | 5. Ottawa,         |
| 2. Hamilton, | 6. St. Catharines, |
| 3. Kingston, | 7. Belleville, and |
| 4. London.   | 8. Brantford,      |

Cities united to counties for judicial purposes,

shall be respectively united to and form part of the Counties within the limits whereof they are respectively situate; but for municipal purposes the said Cities, and all Towns withdrawn from the jurisdiction of the County, shall not form part of the several Counties in which they are respectively situate. C. S. U. C. c. 3, s. 2; 32 V. c. 6, ss. 10 & 22; 39 V. c. 46; 40 V. cc. 33, 34.

but not to be part of counties for municipal purposes.

4. Each of such Unions of Counties under the name of the United Counties of \_\_\_\_\_ and \_\_\_\_\_ (*naming them*), shall, for all purposes (except as before excepted), so long as such Counties remain united, have in common, as if one County, all Courts, offices and institutions established by law, pertaining to Counties. C. S. U. C. c. 3, s. 2, *last part*.

Names of united counties.

#### COURTS IN COUNTIES, ETC.

5. The Courts of Assize and Nisi Prius, of Oyer and Terminer and Gaol Delivery, of General Sessions of the Peace

Courts to be held as formerly.

County Courts, Surrogate Courts and Division Courts, shall continue to be held in and for the said Counties, United Counties and Districts according to law and the statutes relating to such Courts respectively. C. S. U. C. c. 3, s. 3.

#### COURT HOUSES—GAOLS—SCHOOL HOUSES.

The property,  
officers, &c.,  
continued.

Rev. Stat. c.  
174.

**6.** The Court Houses and Gaols, High School Houses, and all other property, real and personal, and all the offices and officers of the Counties, United Counties and Districts existing at the time this Act comes into force, shall belong to and continue in the Counties, United Counties and Districts respectively of the like names under this Act, and as respects such Unions of Counties, until the dissolution thereof under the provisions of "*The Municipal Act.*" C. S. U. C. c. 3, s. 4.

#### BOUNDARIES OF TOWNSHIPS LYING ON CERTAIN LAKES AND RIVERS.

Limit of  
townships  
bounded by  
certain lakes  
and rivers.

**7.** The limits of all the Townships lying on the River St. Lawrence, Lake Ontario, the River Niagara, Lake Erie, the River Detroit, Lake St. Clair, the River St. Clair and Lake Huron, shall extend to the boundary of the Province in such lake or river, in prolongation of the outlines of each Township respectively; and unless herein otherwise provided, such Townships shall also include all the islands, the whole or the greater part of which are comprised within the said outlines so prolonged. C. S. U. C. c. 3, s. 5.

#### BOUNDARIES OF TOWNSHIPS ON THE OTTAWA.

Limits of  
townships on  
the Ottawa.

**8.** The limits of the Townships lying on the River Ottawa shall in like manner extend to the boundary between the Provinces of Ontario and Quebec. C. S. U. C. c. 3, s. 6.

#### TOWNSHIPS ON LAKE ST. FRANCIS AND RIVER ST. LAWRENCE.

In Glengarry.

**9.** The limits of the Townships in the County of Glengarry shall in like manner extend to the middle of Lake St. Francis, and to the middle of the main channel of the River St. Lawrence, and unless herein otherwise provided, shall also include all the islands, the whole or the greater part of which are comprised within the outlines of the said Townships so prolonged. C. S. U. C. c. 3, s. 7.

#### TOWNSHIPS ON THE BAY OF QUINTÉ AND ON OTHER BAYS, LAKES AND RIVERS.

On Bay of  
Quinté and on  
other bays,  
lakes and  
rivers.

**10.** The limits of the Townships on the Bay of Quinté, the River Trent and its lakes, Lake Simcoe, the River Severn, the River Rideau and its lakes, the River Thames, the Grand River, and any other rivers, lakes and bays not hereinbefore mentioned, shall in like manner extend to the middle of the said lakes and bays, and to the middle of the main channels of the



## CHAPTER 6.

## An Act respecting the Provisional County of Haliburton.

## CONSTITUTION OF HALIBURTON—

Townships of, which composed, s. 1.

Rights, powers, and liabilities of the Prov. County and its Council, ss. 3-5.

## ADMINISTRATION OF JUSTICE—

Annexed to Victoria for judicial purposes, s. 6.

Stipendiary Magistrate, s. 7.

Powers, &c., s. 8.

Oath of Office, s. 9.

Justices of the Peace, s. 10.

Trial of prisoners by Stipendiary Magistrate, s. 11.

Appeals from Justices, s. 12.

Returns of convictions, s. 13.

Gaols, &c., ss. 14-17.

Expenses of Administration of Justice, s. 18.

Division Courts, ss. 19-22.

Appeals in Assessment cases, s. 23.

## REGISTRATION—

Of instruments affecting land, ss. 24-26.

Of chattel mortgages, s. 27.

PROVISIONS RELATIVE TO THE ESTABLISHMENT AS A COUNTY, ss. 28-31.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Limits of  
provisional  
county of  
Haliburton.

**1.** The Townships of Lutterworth, Anson, Hindon, Snowdon, Glamorgan, Monmouth, Cardiff, Minden, Dysart, Dudley, Harcourt, Stanhope, Guilford, Harburn, Bruton, Sherborne, Havlock, Eyre, Clyde, McClintock, Livingstone, Lawrence and Nightingale, shall continue to form and be a Provisional County by the name of the Provisional County of Haliburton, and the inhabitants thereof shall continue to be a Provisional County Corporation, to be styled "The Corporation of the Provisional County of Haliburton." *See 37 V. c. 65, s.1. Proclamations of 6th June and 4th July, 1875.*

United town  
ships of Gla-  
morgan, Car-  
diff and Mon-  
mouth.

**2.** The Townships of Glamorgan, Cardiff, and Monmouth shall continue to form a separate Municipality under the name of "The United Townships of Glamorgan, Cardiff and Monmouth," until separated according to law. 37 V. c. 65, s. 8.

Rights, lia-  
bilities and  
powers of the  
provisional  
county corpo-  
ration and  
council.

**3.** The said Provisional County and the Corporation and Council thereof shall have and possess respectively all the rights, powers, liabilities and incidents of a County, County Corporation and County Council; and the Municipal Law and Statutes of Ontario, applicable to Counties, County Corporations and County Councils, and the members of such Councils, shall apply to the said Provisional County, except where inconsistent with this Act. 37 V. c. 65, s. 10.



4. The authority of the Corporation of the said Provisional County to grant aid to any railway company is hereby limited to such companies as by their special Acts are authorized to apply for such aid, and the same shall be granted under and subject to such authorities and provisions as may be contained in the special Act under which the application is made. Power to aid railways.

2. No by-law for granting aid by way of bonus or otherwise to any railway company, shall be valid, unless after one month from the time when it was duly passed, it is approved by the Lieutenant-Governor in Council.

3. It shall not be necessary in any such by-law to set out the amount of rateable property. 37 V. c. 65, s. 11.

5. The Reeves and Deputy-Reeves of the Municipalities within the Provisional County shall compose the Council thereof; and the meetings of the Council shall be held at such place within the County as the Lieutenant-Governor may name as the place where the Registry Office shall be kept. 37 V. c. 65, s. 12. Composition and meetings of the council.

#### ADMINISTRATION OF JUSTICE.

6. The said Provisional County shall, for judicial purposes not provided for by this Act, be united to and form part of the County of Victoria; and the various provisions of the law as to the holding of Courts, except Division Courts, and as to the officers of such Courts, and respecting judicial process and proceedings, including the selection of jurors, applicable to Unions of Counties, shall apply to the said judicial union except where inconsistent with this Act. 37 V. c. 65, s. 13; *Proclamation 4th July, 1875.* Annexation for certain judicial purposes to county of Victoria.

7. The Lieutenant Governor may from time to time appoint, in and for the said Provisional County, a fit and proper person to be Stipendiary Magistrate thereof, who shall hold office during pleasure, and shall be *ex officio* a Justice of the Peace for the said Provisional County; and shall have the jurisdiction and authority of two Justices of the Peace therein, and shall exercise within such Provisional County, magisterial, judicial and other functions herein expressed or provided for, and shall reside in such place within the said Provisional County as the Lieutenant-Governor may direct; and it shall not be necessary for the said Stipendiary Magistrate to possess any property qualification. 37 V. c. 65, s. 15. Stipendiary magistrate, powers, residence, qualification.

8. The provisions of sections six, seven, eight and fifty-one of chapter ninety of the Revised Statutes of Ontario, entitled "*An Act respecting the Administration of Justice in unorganized tracts*," shall extend and apply to the said Provisional County. 37 V. c. 65, s. 15. Powers. Rev. Stat. c. 90, ss. 6, 7, 8, 51, to apply.

Oath of stipendiary magistrate

**9.** The oath to be taken by the Stipendiary Magistrate, in addition to his oath of office as a Justice of the Peace, shall be as follows :

“ I (A. B.) do swear that I will truly and faithfully execute, without fear, without favour and without malice, the several powers, duties and trusts committed to, or required of me by *The Act respecting the Provisional County of Haliburton*: So help me God.”

37 V. c. 65, s. 16.

Justices of the Peace.

**10.** Justices of the Peace appointed for the County of Peterborough, for the County of Victoria, or for the District of Nipissing, respectively, who at the time of the formation of the Provisional County resided within the said Provisional County shall be Justices of the Peace for the said Provisional County of Haliburton, and shall not act as Justices of the Peace for the County of Peterborough, or Victoria, or for the District of Nipissing, except that the Justices of the Peace of the County of Victoria when sitting in the General Sessions of the Peace shall have jurisdiction in Haliburton; and save as aforesaid, no Justice of the Peace of either of the said Counties of Peterborough and Victoria shall, as such, have any jurisdiction within Haliburton.

**2.** The Justices of the Peace for Haliburton shall be entitled to sit in the General Sessions held for the said judicial union. 37 V. c. 65, s. 14.

Trial by stipendiary magistrate, or commitment by him for trial.

**11.** In case the Stipendiary Magistrate has authority to try any prisoner confined in the Gaol in Haliburton for the offence for which he is committed, he may cause him to be brought before him for trial, or for the purpose of electing whether he shall be tried before him, and may commit him to the Gaol at Lindsay, in the event of his electing not to be so tried, or may otherwise act, as the case may require. 37 V. c. 65, s. 19.

Appeal from decision of stipendiary magistrate or justices of the peace.

**12.** Where, according to the general laws of this Province, in matters within the legislative authority of the Legislature of this Province, an appeal lies from the decision of the Stipendiary Magistrate or of any Justice or Justices of the Peace, to the General Sessions of the Peace, such appeal, in cases arising in the said Provisional County, shall lie to, and may be brought before, and heard and determined by the Court of General Sessions of the Peace for the County of Victoria, and shall be claimed, and allowed, and prosecuted in the same manner and within the same period as if the same had arisen within the limits of the said County. 37 V. c. 65, s. 20; 40 V. c. 24, s. 12.

Returns of convictions.

**13.** All returns of convictions required by law to be made by any Justice of the Peace for the said Provisional County shall be made to the Clerk of the Peace for the said judicial union. 37 V. c. 65, s. 21.

**14.** The Lieutenant-Governor may from time to time direct that one or more suitable gaols or lock-ups shall be provided by the Commissioner of Public Works, in the said Provisional County. 40 V. c. 24, s. 1.

Erection  
gaol.

**15.** Any gaol or lock-up erected in the Provisional County of Haliburton under the authority of the Lieutenant-Governor, shall be a Common Gaol of such Provisional County, and of the County of Victoria, for the safe custody of persons charged with the commission, within the said Provisional County, of crimes, or with the commission therein of offences against any statute of this Province, or against any municipal by-law who may not have been finally committed for trial; or for the safe custody of persons finally committed for trial, charged as aforesaid, who are to be tried within the said Provisional County; or for the confinement of persons sentenced within the said Provisional County for crimes, or for offences aforesaid, for periods not exceeding one month; or for the confinement of persons sentenced as aforesaid for periods exceeding one month, until such persons can be conveniently removed to the Gaol at Lindsay, or other lawful prison to which they are sentenced. 40 V. c. 24, s. 5.

Gaols in Haliburton to be Common Gaols of Haliburton and Victoria.

**16.** Nothing contained in the last section shall be construed to prevent any Court, Stipendiary Magistrate or other Magistrate from directing the committal, either for safe custody, or for punishment, of any person whom it may be considered expedient to commit to the Common Gaol at Lindsay. 40 V. c. 24, s. 6.

The last section not to prevent committal to the gaol at Lindsay.

**17.** The Stipendiary Magistrate shall have authority to appoint a gaoler and such constables as may be necessary; and the salary of the said gaoler shall be provided by the Council, subject to the proper proportion thereof being repaid, according to the rule governing in other Counties. 37 V. c. 65, s. 18.

Appointment of gaoler and constables; salary of gaoler.

**18.** The Provisional County shall bear and pay to the municipal County of Victoria, its just share of all charges and expenses of repairing and maintaining the Court House and Gaol at Lindsay, and of the care and maintenance of prisoners, and the other expenses of administration of justice, in the same manner as Towns separated from the municipal jurisdiction of Counties; and the provisions of the Municipal Law for the determination of the compensation to be paid, which are applicable between Counties and separate Towns, shall apply to the said municipal County and the said Provisional County. 37 V. c. 65, s. 25.

Contributions for expenses of court-house, gaol, and administration of justice, &c.

### *Division Courts*

**19.** The Stipendiary Magistrate shall act as Division Court Judge of the Provisional County, and shall have the like jurisdiction and powers as are possessed by County Court Judges in Division Courts in Counties, and shall perform the like duties;

Stipendiary Magistrate to act as Division Court Judge.

and the provisions of law from time to time in force relating to Division Courts in Counties and the officers thereof shall apply to the Division Courts of the said Provisional County, except where inconsistent with this Act. 37 V. c. 65, s. 28.

Division  
Courts, limits  
of.

**20.** The Division Courts wholly within the limits of the Provisional County shall continue Division Courts thereof, and territory belonging to a Division Court not wholly within the Provisional County shall continue to belong to such Division Court until a change is made under the next section. 37 V. c. 65, s. 29.

Power to es-  
tablish and  
alter divisions  
of Division  
Courts.

**21.** The Lieutenant-Governor in Council may divide the Provisional County into as many Division Court Divisions as he may consider requisite, and may number the same consecutively, and may from time to time alter the number, limits and extent of every such Division. 37 V. c. 65, s. 30.

Times and  
places for  
holding Court  
in each divi-  
sion.

**22.** A Court shall, unless the Lieutenant-Governor in Council otherwise directs, be held in every such Division once in every three months, or oftener, at the discretion of the Stipendiary Magistrate who may appoint, and may from time to time alter, the times and places within the Divisions, when and at which such Courts shall be holden, subject to the approval of the Lieutenant-Governor in Council. 37 V. c. 65, s. 31.

#### *Appeals in Assessment Cases.*

Appeal from  
Court of Revi-  
sion to the  
Stipendiary  
Magistrate.

**23.** An appeal shall lie from the decision of the Court of Revision of any Municipality within the Provisional County of Haliburton to the Stipendiary Magistrate instead of to the Judge of the County Court; and the Stipendiary Magistrate shall have the like powers and shall perform the like duties in respect of such appeals as are performed by the County Court Judge in other Counties. 37 V. c. 65, s. 32.

#### REGISTRATION.

Registrar of  
deeds; regis-  
trations.

**24.** The Lieutenant-Governor may appoint a Registrar of deeds, in and for the said Provisional County, who shall hold office during pleasure; and such Registrar shall register all deeds and other conveyances and instruments relating to lands, situate in any part of the said Provisional County, and laid out and surveyed by the Crown. 37 V. c. 65, s. 22. *Proclamation of 6th March, 1875.*

Registry office,  
fees of Regis-  
trars, &c.

**25.** The said Registrar shall keep his office in a place to be named for that purpose in his commission, or at such other place as may be from time to time appointed by the Lieutenant-Governor in Council; and his duties shall be the same as the duties of other Registrars under the registry laws of this Province; and his fees shall be the same as those appointed and established by such registry laws. 37 V. c. 65, s. 23.



**26.** The provisions of law relating to securities to be given by Registrars in other parts of Ontario shall apply to the Registrar of deeds of the Provisional County of Haliburton, except that the covenant to be given by such Registrar shall be for such an amount as the Lieutenant-Governor in Council may determine. 39 V. c. 17, s. 8. Securities by Registrars.

**27.** In the case of any instruments mentioned in *The Act respecting Mortgages and Sales of Personal Property*, made or executed after the sixth day of June, 1874, within the said Provisional County, or affecting personal property therein, the same shall be registered in the office of the Clerk of the County Court of the judicial union. 37 V. c. 65, s. 21. Registry of chattel mortgages and bills of sale under Rev. Stat. c. 119.

#### PROVISIONS FOR ESTABLISHMENT AS A COUNTY.

**28.** The Council of the Provisional County may acquire the necessary property, at any place within the County that the Council may determine, on which to erect a Court-House, Gaol and Registry Office, and may erect a Court-House, Gaol and Registry Office thereon adapted to the wants of the County, and in conformity with any statutory or other rules and regulations respecting such buildings, and may pass by-laws for such purposes. 37 V. c. 65, s. 33. Power to erect court-house, gaol, and registry office.

**29.** After a sufficient Court-House, Gaol and Registry Office have been built in such Provisional County, the Lieutenant-Governor may, upon application of the Council, require for the Provisional County the appointment of a Judge, and shall appoint a Sheriff, a Coroner or Coroners, a Clerk of the Peace, a Clerk of the County Court, a Registrar, and at least twelve Justices of the Peace, and shall provide in the commissions that the appointments are to take effect on the day the County of Haliburton becomes disunited from the said judicial union. 37 V. c. 65, s. 34. Power to appoint County Judge, Sheriff, Coroners, Clerk of the Peace, Clerk of County Court, Registrar and Justices of the Peace.

**30.** After such appointments are made, the Lieutenant-Governor shall, by proclamation, erect the said Provisional County into a County, and shall separate the Provisional County from the County of Victoria, and shall declare that such separation shall take effect at a day to be named in the proclamation, and on that day the Courts and officers of the said union (including Justices of the Peace) shall cease to have any jurisdiction in the County of Haliburton, subject, however, to the exceptions in the next section contained. 37 V. c. 65, s. 35. Power to erect into a separate county.

**31.** The provisions of law, with reference to judicial proceedings, applicable in the case of a separation of a Junior from a Senior County, shall apply in the case of the separation of the Provisional County from the County of Victoria. 37 V. c. 65, s. 36. Judicial proceedings on separation.



## CHAPTER 7.

## An Act respecting the Territorial Districts of Muskoka, Parry Sound and Thunder Bay.

---

Limits of Muskoka, s. 1.	Commissioners for taking Affidavits, s. 11.
“ Parry Sound, s. 2.	Execution of Writs, ss. 12, 13.
“ Thunder Bay, s. 3.	Gaols, &c., ss. 14-17.
ADMINISTRATION OF JUSTICE—	Division Courts, ss. 18-22.
Stipendiary Magistrate, ss. 4-7.	REGISTRATION—
Justices of the Peace, s. 8.	Of instruments relating to land,
Returns of Convictions, s. 9.	ss. 23-26.
Appeals from Justices, s. 10.	MISCELLANEOUS, ss. 27-29.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

## MUSKOKA.

Limits of the  
District of  
Muskoka.

1. The following territory shall for the purposes of this Act continue to be and form one Territorial District by the name of the Territorial District of Muskoka, that is to say, the territory bounded on the south by the middle of the main channel of the River Severn, and a line formed by the southerly boundaries of the Townships of Morrison and Ryde, the easterly boundary of Ryde, the southerly boundary of the Township of Oakley, the easterly boundary of Oakley and the southerly boundary of the Township of Ridout; bounded on the east by the Bobcaygeon road and the line surveyed for the continuation of the said road; on the north by the southerly boundary of the Territorial District of Parry Sound; and on the west by the waters of the Georgian Bay; including the islands in the Georgian Bay, lying west of the said territory and adjacent thereto. 31 V. c. 35, s. 1; *Proclamation of 9th March, 1868*; 36 V. c. 49, s. 11; 39 V. c. 7, s. 17.

## PARRY SOUND.

Limits of the  
District of  
Parry Sound.

2. The following territory shall, for the purposes of this Act continue to be and form one Territorial District by the name of the District of Parry Sound, that is to say the territory bounded as follows:—Commencing at a point where the southerly boundary of the Township of Humphrey, produced on a course south sixty-nine degrees eight minutes and twenty seconds west, intersects the waters of the Georgian Bay; thence north sixty-nine degrees eight minutes and twenty seconds east, along the said boundary produced, and along the southerly

boundaries of the Townships of Conger and Humphrey to the south-east corner of the Township of Humphrey; thence northerly along the easterly boundary of Humphrey to the north-east corner of Humphrey; thence easterly along the northerly boundary of the Townships of Cardwell, Stisted and Chaffey to the north-east corner of the said Township of Chaffey; thence north sixty-nine degrees eight minutes and twenty seconds east, to the line surveyed for the continuation of the Bobcaygeon Road; thence north twenty degrees fifty-one minutes and forty seconds west, along the said line to the middle of the main channel of Lake Nipissing; thence westerly along the main channel of said lake, and along the main channel of French River to its most westerly mouth at the intersection of the easterly boundary of the District of Algoma with the waters of the Georgian Bay; thence south-easterly along the easterly shore of the said Georgian Bay to the place of beginning, including Parry Island and the islands opposite to and along the shore of the said District. 33 V. c. 24, s. 1; *Proclamation of 21st March, 1870*; 39 V. c. 7, s. 16.

## THUNDER BAY.

3. The following territory shall, for the purposes of this Act, continue to be and form one Territorial District by the name of the District of Thunder Bay, that is to say:—all that part of the District of Algoma lying west of the meridian of eighty-seven degrees of west longitude. 34 V. c. 4, s. 1; *Proclamation of 1st June, 1871*.

Limits of the  
District of  
Thunder Bay.

## ADMINISTRATION OF JUSTICE.

4. The Lieutenant-Governor may, from time to time, appoint in and for each of the said Territorial Districts a fit and proper person to be Stipendiary Magistrate thereof, who shall hold office during pleasure, and exercise within the District the magisterial, judicial and other functions herein expressed or provided, and who shall reside in such place within the District as the Lieutenant-Governor may direct. 31 V. c. 35, s. 2; 33 V. c. 24, s. 4; 34 V. c. 4, s. 4.

Stipendiary  
magistrate  
may be ap-  
pointed.

5. Every such Stipendiary Magistrate shall be paid out of the Consolidated Revenue Fund of this Province, in the Districts of Muskoka and Parry Sound, the yearly sum of one thousand dollars, and in the District of Thunder Bay the yearly sum of twelve hundred dollars; each of the said sums to be paid quarterly, on the first days of January, April, July and October in each year, by equal portions; and each Stipendiary Magistrate may, moreover, have and take, to his own use, the fees authorized to be taken by Justices of the Peace or by their clerks, in cases of summary convictions. 31 V. c. 35, s. 3; 33 V. c. 24, s. 5; 34 V. c. 4, s. 5.

Salary of such  
magistrate.

6. The oath to be taken by each of the said Stipendiary

Form of oath.

Magistrates, in addition to his oath of office as a Justice of the Peace, shall be as follows :

“I, A, B., do swear, that I will truly and faithfully execute the several powers, duties and trusts committed to, or required of me, by *The Act respecting the Territorial Districts of Muskoka, Parry Sound, and Thunder Bay*, without fear, without favour, and without malice : So help me God.”

32 V. c. 49, s. 6 ; 33 V. c. 24, s. 6 ; 34 V. c. 4, s. 6.

Justices of the Peace. Qualification, &c., not necessary.

7. The Lieutenant-Governor in Council may, from time to time, appoint fit and proper persons to be and act as Justices of the Peace in and for each of the said Territorial Districts, and it shall not be necessary for any of such Justices of the Peace to possess any property qualification whatever, or to be a stated resident within the Territorial District for which he is appointed. 31 V. c. 35, s. 5 ; 33 V. c. 24, s. 8 ; 34 V. c. 4, s. 8.

Authority of such Justices.

8. The Justices of the Peace appointed under this Act shall have, hold and exercise all and any of the powers and authority, and be subject in all respects (except as to any matters incident to the residence or property qualification, required in cases not within the meaning of this Act) to the requirements of the laws in force in this Province, respecting the office of Justice of the Peace, in so far as the same may be applicable to the persons appointed under this Act, and not inconsistent with the removal of the restrictions hereby intended to be imposed. 31 V. c. 35, s. 6 ; 33 V. c. 24, s. 9 ; 34 V. c. 4, s. 9.

Returns of convictions.

9. All returns of convictions required by law to be made by any Justice or Justices of the Peace shall be made for the Districts of Muskoka and Parry Sound to the Clerk of the Peace for the County of Simcoe ; and for the District of Thunder Bay to the Clerk of the Peace for the District of Algoma. 32 V. c. 49, s. 5 ; 33 V. c. 24, s. 11 ; 34 V. c. 4, s. 11.

Appeal from decisions of Justices of the Peace.

10. In all cases arising in the said Districts in which, according to the general laws of this Province in matters within the legislative authority of the Legislature of this Province, an appeal lies from the decision of the Stipendiary Magistrate or of any one or more Justices of the Peace to the General Sessions of the Peace, such appeal shall lie to, and may be brought before, and heard and determined, in cases arising in the Districts of Muskoka and Parry Sound, by the Court of General Sessions of the Peace for the County of Simcoe ; and in cases arising in the District of Thunder Bay, by the Court of General Sessions of the Peace for the District of Algoma ; and such appeal shall be claimed and allowed and prosecuted in the same manner, and within the same period, as if the same had arisen within the limits of the County of Simcoe or the District of Algoma respectively. 32 V. c. 49, s. 3 ; 33 V. c. 24, s. 13 ; 34 V. c. 4, s. 13 ; 40 V. c. 24, s. 12.

Commissioners for

11. The Superior Courts at Toronto may, from time to time, appoint Commissioners for taking affidavits and recognizances

of bail, in and for the said Territorial Districts. 31 V. c. 35, s. 12; 33 V. c. 24, s. 17; 34 V. c. 4, s. 17. taking affidavits.

**12.** The Queen's writs shall run and may be executed in any part of the said Districts, and shall have the same force and effect upon persons and property as similar writs have in the organized parts of Ontario. 31 V. c. 35, s. 12; 33 V. c. 24, s. 17; 34 V. c. 4, s. 17.

2 Such writs, in the Districts of Muskoka and Parry Sound, shall be directed to the Sheriff of the County of Simcoe; and in the District of Thunder Bay shall (subject to the provisions of the next section) be directed to the Sheriff of the District of Algoma. 34 V. c. 4, s. 17; 38 V. c. 13, s. 8; 40 V. c. 24, s. 2. Writs to whom to be directed.

**13.** The Lieutenant-Governor in Council may direct that the Sheriff of the District of Algoma shall appoint a Deputy, who shall keep an office at Prince Arthur's Landing, in the District of Thunder Bay, for the receipt of all writs affecting lands or goods and chattels in the District of Thunder Bay, and such Deputy shall possess all the rights of office, except as to fees, and may perform all the duties, belonging to the Sheriff in respect to the District of Thunder Bay. Power to appoint Deputy Sheriff for District of Thunder Bay: his duties, &c.

2. In case of a vacancy in the said office of Deputy Sheriff, or in case the said Deputy Sheriff is, through sickness, unable to perform his duties, and no person has been appointed by the Sheriff or Deputy Sheriff to act in such a contingency, of which appointment the Stipendiary Magistrate shall be notified, the Stipendiary Magistrate may, by an instrument in writing, appoint some person to perform the duties of the Deputy Sheriff, until another person assumes the performance of such duties, under the written authority of the Sheriff or Deputy Sheriff. 38 V. c. 13, s. 7. Substitute for Deputy Sheriff in case of illness, &c., of Deputy

3. Writs of execution against goods or lands shall bind goods and lands respectively within the District of Thunder Bay, from the time that the same are delivered, within the said District of Thunder Bay, to the Sheriff or Deputy Sheriff within the said District to be executed, and writs intended to bind goods or lands within the said District shall be directed to the said Sheriff as "Sheriff of the Territorial District of Thunder Bay." 40 V. c. 7, *Sched. A* (1). After proclamation, &c. priority of writs shall be from the time when received by the said Deputy within said District.

4. Any writs received by the said Sheriff directed to him as Sheriff of the District of Thunder Bay, shall be forwarded by him, by the next mail, to his Deputy at Prince Arthur's Landing. Forwarding writs to Deputy.

5. Nothing herein contained shall affect the priority of any writs being on the first day of July, 1876, in the hands of the Sheriff. 38 V. c. 13, s. 8. *Proclamation of May 27, 1876.* Priority of writs received on 1st July, 1876.



Erection of  
gaols in Dis-  
tricts.

**14.** The Lieutenant-Governor may from time to time direct that one or more suitable gaols or lock-ups shall be provided by the Commissioner of Public Works in the said Districts. 40 V. c. 24, s. 1.

Gaols of Mus-  
koka and  
Parry Sound  
to be also  
common gaols  
of Simcoe.

**15.** Any gaol or lock-up erected in either of the said Districts of Muskoka or Parry Sound, under the authority of the Lieutenant-Governor, shall be a Common Gaol of such District, and of the County of Simcoe, for the safe custody of persons charged with the commission, within such District, of crimes, or with the commission therein of offences against any of the statutes of this Province, or against any municipal by-law, who may not have been finally committed for trial; or for the safe custody of persons finally committed for trial, charged as aforesaid, who are to be tried within such District; or for the confinement of persons sentenced within the said District for crimes or offences aforesaid, for periods not exceeding one month; or for the confinement of persons sentenced as aforesaid, for periods exceeding one month, until such persons can be conveniently removed to the Gaol at Barrie, or other lawful prison to which they are sentenced. 40 V. c. 24, s. 3.

Gaols in  
Thunder Bay  
to be common  
gaols of  
Thunder Bay  
and Algoma.

**16.** Any gaol or lock-up erected in the said District of Thunder Bay, under the authority of the Lieutenant-Governor, shall be a Common Gaol of such District, and of the Provisional Judicial District of Algoma, for the safe custody of persons charged with the commission, within the said District of Thunder Bay, of crimes, or with the commission therein of offences against any statutes of this Province, or against any municipal by-law who may not have been finally committed for trial; or for the safe custody of persons finally committed for trial charged as aforesaid, who are to be tried within the said District of Thunder Bay; or for the confinement of persons sentenced within the said District for crimes or for offences aforesaid for periods not exceeding two months; or for the confinement of persons sentenced as aforesaid for periods exceeding two months, until such persons can be conveniently removed to the Gaol at Sault Ste. Marie, or other lawful prison to which they are sentenced. 40 V. c. 24, s. 4.

Sections 15 and  
16 not to pre-  
vent commit-  
tal to gaols at  
Barrie or Sault  
Ste. Marie.

**17.** Nothing contained in the two last preceding sections shall be construed to prevent any Court or Magistrate from directing the committal, either for safe custody or for punishment, of any person whom it may be considered expedient to commit to the Common Gaol at Barrie or Sault Ste. Marie. 40 V. c. 24, s. 6.

#### *Division Courts.*

District may  
be divided into  
divisions.

**18.** The Lieutenant-Governor in Council may divide each of the said Districts into two or more Divisions, and appoint, and from time to time, alter the number, limits and extent of every such Division, and may number the same consecutively, com-



mencing at number one. 32 V. c. 49, s. 1; 33 V. c. 24, s. 2; 34 V. c. 4, s. 2.

**19.** A Court shall be held in every such Division once in every three months, or oftener at the discretion of the Stipendiary Magistrate, who may appoint, and from time to time alter the times and places within such Divisions when and at which such Courts shall be holden, subject to the approval of the Lieutenant-Governor in Council. 32 V. c. 49, s. 2; 33 V. c. 24, s. 3; 34 V. c. 4, s. 3.

Court to be held in each division.

**20.** The Stipendiary Magistrate shall act as Division Court Judge of the District and shall have the like jurisdiction and powers as are possessed by the County Court Judges in Division Courts in Counties, and shall perform the like duties; and the provisions of The Revised Statutes of Ontario, relating to Division Courts in Counties, and the officers thereof, including the Rules or Forms made or to be made by the Board of County Judges, and the fees payable to the Clerks and Bailiffs, shall apply to the Division Courts of the said Districts, except where inconsistent with this Act. 40 V. c. 24, s. 9.

Stipendiary Magistrate to be Judge of Division Court. Division Court procedure in force in counties to be applicable except where inconsistent with this Act.

**21.** The Judge or Junior Judge of the County Court of the County of Simcoe, may, if he thinks fit, at the request of the Stipendiary Magistrate of the District, hold any Division Court in the District of Muskoka, or in the District of Parry Sound; and the Stipendiary Magistrate of either of such Districts, may if he thinks fit, at the request of the Judge or Junior Judge of the said County of Simcoe, hold any Division Court in such County.

Holding of Division Courts in Simcoe, Muskoka and Parry Sound.

**2.** Every Judge or Stipendiary Magistrate while holding any such Court shall have all the rights, powers and privileges of the officer at whose request he is holding Court. 40 V. c. 24, s. 7.

**22.** The provisions of sections four to eight inclusive, eleven, twelve, and fourteen to twenty-five inclusive, of chapter ninety of the Revised Statutes of Ontario, entitled "*An Act respecting the Administration of Justice in unorganized tracts*," shall extend and apply to each of the said Districts, in the same manner and with the like effect as if they and each of them were here inserted and re-enacted, and made applicable in express terms to each of the said Districts, with the substitution of the words "the said Territorial Districts," for the words "such Temporary Judicial District," "his Temporary Judicial District," "the Temporary Judicial District," "each Temporary Judicial District," "any Temporary Judicial District," or "every Temporary Judicial District;" the words "the District of" for the words "the Temporary Judicial District of" and the word "District," for the words "unorganized country;" wherever the same

Rev. Stat. c. 90, ss. 4-8, 11, 12, 14-17, to apply with certain substitutions.

occur in the said sections. 31 V. c. 35, s. 4; 33 V. c. 24, s. 7; 34 V. c. 4, s. 7; *See* 40 V. c. 24, s. 9.

#### REGISTRATION OF DEEDS, &C.

Registrar of  
Deeds may be  
appointed.

**23.** The Lieutenant-Governor in Council may appoint a Registrar of Deeds in and for each of the said Territorial Districts, who shall hold office during pleasure, and shall register all deeds, and other conveyances and instruments relating to lands, situate in any part of the Territorial District, and laid out and surveyed by the Crown. 31 V. c. 35, s. 9; 33 V. c. 24, s. 14; 34 V. c. 4, s. 14. *Proclamation of 4th July, 1875.*

Office, duties,  
and fees of  
Registrar.

**24.** The said Registrar shall keep his office in a place to be named for that purpose in his commission, or at such other place as may be appointed from time to time by the Lieutenant-Governor in Council, and his duties shall be the same as the duties of other Registrars under the Registry Laws of this Province; and his fees shall be the same as those appointed and established by such Registry Laws. 31 V. c. 35, s. 10; 33 V. c. 24, s. 15; 34 V. c. 4, s. 15.

Securities by  
Registrars.

**25.** The provisions of law relating to securities to be given by Registrars of Deeds in other parts of Ontario shall also apply to the Registrars of the Districts of Muskoka, Parry Sound and Thunder Bay, except that the covenant to be given by such officers shall be for such an amount as the Lieutenant-Governor in Council may determine. 39 V. c. 17, s. 8.

Certain regis-  
trars to trans-  
fer books,  
deeds, &c.

**26.** The Registrars of any of said Districts when thereunto required by the Lieutenant-Governor, shall transfer and deliver to the Registrars of any other or others of the said Districts all books, deeds, papers, plans and documents in their possession respectively as such Registrars referring or relating exclusively to any lands within such other District or Districts; and all the provisions of the Registry Laws of this Province relating to the transfer of books, deeds, memorials, plans and other documents or instruments from one Registry Office to another Registry Office when a part of a County has been detached therefrom and set apart for registration purposes, shall apply to the Registrars and Registry Offices in the said Districts. 31 V. c. 35, s. 11; 33 V. c. 24, s. 16; 34 V. c. 4, s. 16. *See also Rev. Stat. c. 111, s. 28.*

#### GENERAL PROVISIONS.

For certain  
judicial pur-  
poses, Districts  
to form part of  
Simcoe or  
Algoma.

**27.** For all judicial purposes not provided for by this Act, the Townships and territory composing the Districts of Muskoka and Parry Sound shall continue to form part of the County of Simcoe, and the Townships and territory composing the District of Thunder Bay shall continue to form part of the District of Algoma. 34 V. c. 4, ss. 1 & 19.

28. The Lieutenant-Governor in Council may from time to time, by proclamation, detach any Township or territory from the Temporary Judicial District of Nipissing and annex the same to the Territorial District of Muskoka; or from the Districts of Nipissing, Algoma and Muskoka, and annex the same to the Territorial District of Parry Sound; or from the District of Algoma, and annex the same to the Territorial District of Thunder Bay, and may also, by any subsequent proclamation, declare that any of the said Districts of Muskoka, Parry Sound or Thunder Bay, with or without any other territory, shall, from a day to be mentioned in such last mentioned proclamation, constitute and form a Provisional Judicial District, under the provisions of the twenty-ninth section of the said chapter ninety of the Revised Statutes of Ontario. 31 V. c. 35, s. 15; 33 V. c. 24, s. 22; 34 V. c. 4, s. 22.

Lieut.-Gov.  
may annex  
other territory  
and may  
erect said Dis-  
tricts into  
Provisional  
Judicial Dis-  
tricts, under  
Rev. Stat.  
c. 90.

29. Nothing in this Act shall affect the provisions of *The Act respecting the Representation of the People in the Legislative Assembly*. See 31 V. c. 35, s. 14; 33 V. c. 24, s. 19; 34 V. c. 4, s. 19.

This Act not  
to affect Rev.  
Stat. c. 8.

## TITLE III.

### CONSTITUTION, LEGISLATION, &c.

CHAP. 8.—Representation in the Legislative Assembly, p. 50.

9.—Voters' Lists, p. 65.

10.—Elections and Prevention of Corrupt Practices, p. 89.

11.—Controverted Elections, p. 160.

12.—The Legislative Assembly, p. 182.

### CHAPTER 8.

#### An Act respecting the Representation of the People in the Legislative Assembly.

Electoral Districts, number, s. 1.	Act not to affect divisions of the Province for Registration purposes, s. 13.
Counties, Cities and Towns defined, s. 2.	ELECTORAL DISTRICTS—
Counties and Ridings to include places within limits not being part of other Electoral Districts, s. 3.	Counties divided into Ridings, s. 14.
Gores of Townships to what to belong, s. 4.	Counties and tracts of territory forming Electoral Districts, s. 15.
Electoral limits of represented Cities, ss. 5-7.	City of Toronto, s. 16.
Towns and Villages to what Electoral Division to belong, ss. 8-12.	Each Electoral District to be represented by one member, s. 17.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Electoral districts to be eighty-eight.

1. The Province shall, for the purpose of the election of members to serve in the Legislative Assembly, be divided into the eighty-eight Electoral Districts set forth in this Act. 38 V. c. 2, s. 1.

#### GENERAL PROVISIONS.

What counties, cities and towns are intended in this Act.

2. Except in so far as it is otherwise provided in this Act, the Counties herein referred to are those mentioned in the fifth chapter of the Revised Statutes of Ontario (or other statutes

in force in the Province, concerning Territorial Divisions) ; and the Cities and Towns herein referred to are those mentioned in the statutes or proclamations, describing and defining the said Cities and Towns, for municipal purposes. C. S. C. c. 2, s. 1.

3. For the purposes of this Act, the Counties and Ridings herein mentioned include every place lying within their respective limits, and not expressly included by this Act within the limits of some other Electoral District. C. S. C. c. 2, s. 2 (1).

Counties to include every place within their limits not included in some other electoral district.

4. All augmentations or gores of Townships, not specially mentioned in this Act, shall be considered as forming part of the County or Riding in which the principal part of such locality is situate, —unless it is otherwise ordered in some statute in force. C. S. C. c. 2, s. 2 (2).

Towns, villages, augmentations, &c.

5. The several Cities or Towns which under this Act are entitled to elect a member or members to represent them respectively in the Legislative Assembly, shall not, for the purpose of representation in the Legislative Assembly, be deemed to form part of the Counties or Ridings within the limits whereof they respectively lie. C. S. C. c. 2, s. 2 (3).

Represented cities and towns not to form, for the purposes of this Act, part of the counties within which they lie.

6. Where any territory belongs, or hereafter is added, for municipal purposes, to a City which is an Electoral District, such Electoral District shall include the territory so belonging or added for municipal purposes. 38 V. c. 2, s. 21.

Electoral limits of cities.

7. In case a City to which territory belongs, or hereafter is added, for municipal purposes, is divided into two or more Electoral Districts, the territory so belonging or added to the City for municipal purposes shall belong to the District to which it is adjacent : or in case a part of such territory is adjacent to one District, and another part to another District, each part shall (having regard to the dividing line between the two Districts and the continuation thereof) belong to the Electoral District to which such part is adjacent. 38 V. c. 2, s. 22.

Cities divided into several electoral districts.

8. Where any territory belongs, or hereafter is added, for municipal purposes to any Town or Village belonging to an Electoral District other than that to which such territory previously belonged ; or where a Town with additional territory is erected into a City, or a Village with additional territory is erected into a Town, the territory so belonging or added for municipal purposes, shall belong to the Electoral District of which the Town or Village forms a part. 38 V. c. 2, s. 23.

Territory added to town or village.

Erection into cities and towns.

9. Every Town and incorporated Village not expressly attached by this or any other Act of the Legislature to an Electoral District, shall, for electoral purposes, be taken as part of the County to which such Town or Village belongs for municipal

Towns and villages not expressly attached to any electoral district.



purposes, and in case the County is divided into Ridings, such Town or Village shall be part of that Riding to which it is adjacent, or within the boundaries of which it is situate. 38 V. c. 2, s. 24.

Town or village composed of portions of two ridings.

10. Except in the case in the sub-sections to this section mentioned, every Town or incorporated Village lying within the boundaries of two or more Ridings of a County, and not expressly included within some Electoral District, shall belong to that Riding which, by the census then last taken under the authority of the Government of the Dominion of Canada and published in the *Canada Gazette*, had the smaller population. For the purposes of this section, every Electoral District to which any portion of a County is attached, shall be deemed a Riding of that County. 38 V. c. 2, s. 25.

Village of Stouffville divided between E. and W. Ridings of York as to voters on real estate.

2. In the case of the Village of Stouffville, inasmuch as it was formed out of parts of the Township of Markham, in the East Riding of York, and the Township of Whitechurch, in the North Riding of York, and if the incorporation of said Village had not taken place, the electors who are entitled to vote in respect to real estate in the said Village, would have been entitled to vote in one of the said two Ridings: and inasmuch as it is desired by the said electors that they should be allowed to vote in the same Riding in which they would have voted if such incorporation had not taken place, therefore it is enacted that—for the purpose of elections to the Legislative Assembly, the said electors shall be entitled to vote in the same Riding in which they would have voted if the said incorporation had not taken place. 40 V. c. 11, s. 1.

Income voters.

3. In the case of income franchise voters, the said voters shall be entitled to vote in that one of the said two Ridings within which they would respectively be resident if the said incorporation had not taken place. 40 V. c. 11, s. 1.

Two lists to be prepared.

4. The Clerk of the Corporation of the said Village of Stouffville shall, in the preparation of voters' lists, prepare two separate voters' lists, having regard to the two separate Ridings within which the said electors, under these sub-sections are entitled to vote. 40 V. c. 11, s. 1.

Town or village composed of parts of two counties.

11. In case any Town or incorporated Village situate in part within two or more Counties, is attached to a Union of Counties for municipal purposes, the provisions of the two next preceding sections of this Act shall be applied as if such Union constituted one County, and as if the Electoral Districts into which the Union is divided were Ridings of that County; and in case any Town, situate as in either of the said two next preceding sections mentioned, is not attached to any County or Union of Counties for municipal purposes, the provisions of the said sections and of this section shall apply thereto, except that

wherever in the said sections the word "municipal" occurs, the word "judicial" shall be substituted therefor. 38 V. c. 2, s. 26.

**12.** The express mention herein of certain Towns and Villages as being included in certain Counties or Ridings, in which they would have been included without such express mention, under the general provisions in that behalf herein contained, shall not prevent the application of such provisions to the cases of Towns and Villages not expressly mentioned herein. 23 V. c. 40, s. 2.

Express mention of certain towns or villages as included in any county not to exclude others not mentioned but within its limits.

**13.** The County or Riding of a County in which any Municipality was before the twenty-first day of December, 1874, situate for the purpose of registry of title to lands, shall continue to be the proper County or Riding of a County respectively of such Municipality for such purpose, notwithstanding anything in this Act. 38 V. c. 2, s. 20.

Counties or Ridings not affected by this Act for registry purposes.

#### ELECTORAL DISTRICTS.

**14.** The following Counties shall be divided into Ridings for the purpose of representation in the Legislative Assembly, and each of such Ridings shall form an Electoral District. C. S. C. c. 2, s. 8.

Certain Counties divided into Ridings.

THE COUNTY OF BRANT shall be divided into two Ridings, to be called respectively the North Riding and the South Riding. Brant.

1. The North Riding shall consist of the Townships of South Dumfries, Onondaga, the northerly portion (hereinafter described) of the Township of Brantford, and the Town of Paris.
2. The South Riding shall consist of the Townships of Burford, Oakland, Tuscarora, the southerly portion of the Township of Brantford, and the City of Brantford.

The said northerly portion of the Township of Brantford shall include and consist of all that portion of the said Township which lies on the northerly side of the Grand River: And the said southerly portion of the said Township shall include and consist of all the remainder of the said Township of Brantford. C. S. C. c. 2, s. 8 (14); B. N. A. Act, 1867, Sch. 1 (30) & (31).

THE COUNTY OF BRUCE shall be divided into two Ridings, to be called respectively the North Riding and the South Riding. Bruce.

3. The North Riding shall consist of the Townships of Bury St. Edmund, Lindsay, Eastnor, Albemarle,

Amabel, Arran, Bruce, Elderslie, and Saugeen, and the Villages of Southampton, Paisley, and Port Elgin.

4. The South Riding shall consist of the Townships of Kincardine, Greenock, Brant, Huron, Kinloss, Culross, and Carrick, the Towns of Walkerton and Kincardine, and the Villages of Lucknow and Teeswater. B. N. A. Act, 1867, Sch. 1 (45, 46) ; 38 V. c. 2, s. 19.

Durham.

THE COUNTY OF DURHAM shall be divided into two Ridings, to be called respectively the East Riding and the West Riding.

5. The East Riding shall consist of the Townships of Cavan, Manvers, and Hope, and the Town of Port Hope.
6. The West Riding shall consist of the Townships of Clarke, Darlington, and Cartwright, the Town of Bowmanville, and the Village of Newcastle. C. S. C. c. 2, s. 8 (5).

Elgin.

THE COUNTY OF ELGIN shall be divided into two Ridings, to be called respectively the East Riding and the West Riding.

7. The East Riding shall consist of the Townships of Bayham, Malahide, Yarmouth, South Dorchester, the Town of St. Thomas, and the Villages of Aylmer, and Vienna.
8. The West Riding shall consist of the Townships of Southwold, Dunwich, and Aldborough, and the Village of Port Stanley. C. S. C. c. 2, s. 8 (15).

Essex.

THE COUNTY OF ESSEX shall be divided into two Ridings, to be called respectively the North Riding and the South Riding.

9. The North Riding shall consist of the Townships of Tilbury West, Rochester, Maidstone, Sandwich East and Sandwich West, the Towns of Windsor and Sandwich, and the Village of Belle River.
10. The South Riding shall consist of the Townships of Mersea, Gosfield, Colchester, Malden, and Anderdon, the Town of Amherstburgh, the Village of Leamington, and the Municipality of Pointe au Pelée Island. 38 V. c. 2, s. 6.

Grey.

The territory hereinafter mentioned, being that portion of THE COUNTY OF GREY which remains after setting apart the County of Dufferin, shall be divided into three Ridings, to be called respectively the North Riding, the South Riding, and the East Riding.

11. The North Riding shall consist of the Townships of St. Vincent, Sydenham, Sullivan, Derby, Keppel and Sarawak, and the Towns of Owen Sound and Meaford.
12. The South Riding shall consist of the Townships of Bentinck, Glenelg, Normanby, and Egremont, and the Town of Durham.
13. The East Riding shall consist of the Townships of Osprey, Collingwood, Proton, Artemesia, Euphrasia, and Holland. 38 V. c. 2, s. 9.

THE COUNTY OF HASTINGS shall be divided into three Rid- Hastings.  
ings, to be called respectively the North Riding, the East Rid-  
ing, and the West Riding.

14. The North Riding shall consist of the Townships of Rawdon, Huntingdon, Elzevir, Madoc, Marmora, Lake, Tudor, Bangor, Carlow, Cashel, Dungannon, Faraday, Grimsthorpe, Herschel, Limerick, Mayo, McClure, Monteagle, Wicklow, Wollaston, Sabine, Lyell, Airy, Murchison, and Robinson, the Village of Stirling, and any other surveyed Townships lying to the north of the said North Riding.
15. The East Riding shall consist of the Townships of Thurlow, Tyendinaga, and Hungerford, and the Village of Millpoint.
16. The West Riding shall consist of the City of Belleville, the Township of Sidney, and the Village of Trenton. B. N. A. Act, 1867, Sch. 1 (75, 76, 77).

THE COUNTY OF HURON shall be divided into three Rid- Huron.  
ings, to be called respectively the South Riding, the East Rid-  
ing, and the West Riding.

17. The South Riding shall consist of the Townships of Tuckersmith, Usborne, Stephen, Hay, and Stanley, and that portion of the Township of Goderich south of the line known as "the Cut Line" and Huron Road, the Town of Seaforth, and the Villages of Bayfield and Exeter.
18. The East Riding shall consist of the Townships of Howick, Grey, Morris, McKillop, and those parts of Hullett and Turnberry respectively which lie east of the road commonly called the Gravel Road, and the Villages of Brussels and Wroxeter.
19. The West Riding shall consist of the Townships of Ashfield, Wawanosh (East and West), Colborne, and

those parts of Hullett and Turnberry respectively which lie west of the road commonly called the Gravel Road, and that part of the Township of Goderich north of the said Huron Road and "Cut Line," and the Towns of Goderich and Clinton, and the Village of Wingham. 38 V. c. 2, s. 2.

Kent.

THE COUNTY OF KENT shall be divided into two Ridings, to be called respectively the East Riding and the West Riding.

20. The East Riding shall consist of the Townships of Zone, Camden (with the Gore thereof), Orford, Howard, and Harwich, the Town of Bothwell, and the Villages of Blenheim, Dresden, Ridgetown, and Thamesville.
21. The West Riding shall consist of the Townships of Romney, East Tilbury, Raleigh, Dover East, Dover West, and Chatham, the Town of Chatham, and the Village of Wallaceburg. 38 V. c. 2, s. 4.

Lambton.

THE COUNTY OF LAMBTON shall be divided into two Ridings, to be called respectively the East Riding and the West Riding.

22. The East Riding shall consist of the Townships of Bosanquet, Warwick, Plympton, Brooke, and Euphemia, and the Villages of Wyoming, Watford, and Forest.
23. The West Riding shall consist of the Townships of Sombra, Dawn, Moore, Enniskillen, and Sarnia, the Towns of Sarnia, and Petrolia, and the Village of Oil Springs. 38 V. c. 2, s. 5.

Lanark.

THE COUNTY OF LANARK shall be divided into two Ridings, to be called respectively the North Riding and the South Riding.

24. The North Riding shall consist of the Townships of Sherbrooke North, Dalhousie, Lanark, Ramsay, Lavant, Darling, and Pakenham, and the Villages of Almonte, Carleton Place and Lanark.
25. The South Riding shall consist of the Townships of Montague, Elmsley North, Burgess North, Sherbrooke South, Beckwith, Drummond, Bathurst, the Town of Perth, and the Village of Smith's Falls. C. S. C. c. 2, s. 8 (9); 38 V. c. 2, s. 19.

Leeds and  
Grenville.

THE COUNTIES OF LEEDS AND GRENVILLE shall be divided into three Ridings, to be called respectively the North Riding of Leeds and Grenville, the South Riding of Leeds, and the South Riding of Grenville.



26. The North Riding of Leeds and Grenville shall consist of the Townships of Kitley, Elmsley, Wolford, Oxford and South Gower, and the Villages of Kemptville and Merrickville.
27. The South Riding of Leeds shall consist of the Townships of Front of Escott, Front of Leeds and Lansdowne, Rear of Leeds and Lansdowne, South Crosby, North Crosby, Bastard, and South Burgess, and the Villages of Gananoque and Newboro'.
28. The South Riding of Grenville shall consist of the Townships of Edwardsburgh and Augusta, and the Town of Prescott. C. S. C. c. 2, s. 8 (11). 38 V. c. 2, s. 17.

THE COUNTY OF MIDDLESEX shall be divided into three Rid- Middlesex.  
ings, to be called respectively the North Riding, the East Riding and the West Riding.

29. The North Riding shall consist of the Townships of McGillivray, Biddulph, Williams East, Williams West, Adelaide and Lobo, and the Villages of Ailsa Craig, Lucan and Parkhill. B. N. A. Act, 1867, Sch. 1 (49).
30. The East Riding shall consist of the Townships of West Nissouri, North Dorchester, Westminster and London; and the Villages of London East and Petersville. C. S. C. c. 2, s. 8 (2).
31. The West Riding shall consist of the Townships of Delaware, Caradoc, Metcalf, Mosa and Ekfrid, the Town of Strathroy, and the Villages of Glencoe, Newbury and Wardsville. B. N. A. Act, 1867, Sch. 1 (49, 50).

THE COUNTY OF NORFOLK shall be divided into two Ridings, Norfolk.  
to be called respectively the North Riding and the South Riding.

32. The North Riding shall consist of the Townships of Middleton, Townsend and Windham, and the Village of Simcoe.
33. The South Riding shall consist of the Townships of Charlotteville, Houghton, Walsingham and Woodhouse, with the Gore thereof. B. N. A. Act, 1867, Sch. 1 (61, 62).

THE COUNTY OF NORTHUMBERLAND shall be divided into two Northumber-  
Ridings, to be called respectively the East Riding and the West Riding.  
land.

34. The East Riding shall consist of the Townships of Cramahe, Brighton, Murray, Seymour and Percy;

and the Villages of Brighton, Campbellford, Colborne and Hastings. C. S. C. c. 2, s. 8 (6); 38 V. c. 2, s. 19.

35. The West Riding shall consist of the Townships of Hamilton, Haldimand, Alnwick and the Town of Cobourg. C. S. C. c. 2, s. 8 (6): B. N. A. Act, 1867, Sch. 1 (16).

Ontario.

THE COUNTY OF ONTARIO shall be divided into two Ridings, to be called respectively the North Riding and the South Riding.

36. The North Riding shall consist of the Townships of Reach, Uxbridge, Brock, Scott, Thorah, Mara, Rama, and Scugog, and the Villages of Port Perry and Uxbridge.
37. The South Riding shall consist of the Townships of Whitby, East Whitby and Pickering, the Town of Whitby, and the Village of Oshawa. C. S. C. c. 2, s. 8 (7).

Oxford.

THE COUNTY OF OXFORD shall be divided into two Ridings, to be called respectively the North Riding and the South Riding.

38. The North Riding shall consist of the Townships of East Nissouri, East Zorra, West Zorra, Blandford and Blenheim, the Town of Woodstock, and the Village of Embro.
39. The South Riding shall consist of the Townships of North Oxford, West Oxford, East Oxford, North Norwich, South Norwich and Dereham, the Towns of Ingersoll and Tilsonburg, and the Village of Norwich. C. S. C. c. 2, s. 8 (3).

Perth.

THE COUNTY OF PERTH shall be divided into two Ridings, to be called respectively the North Riding and the South Riding.

40. The North Riding shall consist of the Townships of Wallace, Elma, Logan, Ellice, Mornington and North Easthope, and the Towns of Stratford and Listowel.
41. The South Riding shall consist of the Townships of Blanchard, Downie, South Easthope, Fullarton and Hibbert, the Towns of Mitchell, and St. Mary's. B. N. A. Act, 1867, Sch. 1 (56 & 57).

Peterborough.

THE COUNTY OF PETERBOROUGH shall be divided into two Ridings, to be called respectively the East Riding and the West Riding.

42. The East Riding shall consist of the Townships of Ottonabee, Douro, Asphodel, Dummer, Belmont, Methuen, Burleigh, Anstruther and Chandos, and the Village of Ashburnham. 38 V. c. 2, s. 14.
43. The West Riding shall consist of the Townships of South Monaghan, North Monaghan, Smith, Ennismore, Harvey, Galway and Cavendish, the Town of Peterborough, and the Village of Lakefield. 38 V. c. 2, s. 15.

THE COUNTY OF RENFREW shall be divided into two Ridings, <sup>Renfrew.</sup> to be called respectively the North Riding and the South Riding.

44. The North Riding shall consist of the Townships of Ross, Bromley, Westmeath, Stafford, Pembroke, Wilberforce, Alice, Petawawa, Buchanan, South Algona, North Algona, Fraser, McKay, Wylie, Rolph, Head, Maria and Clara, the Village of Pembroke, and any surveyed Townships lying north-westerly of the said North Riding.
45. The South Riding shall consist of the Townships of McNab, Bagot, Blithfield, Brougham, Horton, Adamston, Grattan, Matawatchan, Griffith, Lyndoch, Raglan, Radcliffe, Brudenell, Sebastopol, Hagarty, Richards, Sherwood, Burns and Jones, and the Villages of Arnprior and Renfrew. B. N. A. Act, 1867, Sch. 1 (81, 82); 38 V. c. 2, s. 16.

That portion of the COUNTY OF SIMCOE which remains after <sup>Simcoe.</sup> constituting the Electoral Districts of Dufferin, Cardwell, and Muskoka and Parry Sound, shall be divided into three Ridings, to be called respectively the East Riding the West Riding and the South Riding.

46. The East Riding shall consist of the Townships of Tiny, Tay, Matchedash, Orillia, Medonte and Oro, the Town of Orillia, and the Village of Penetanguishene.
47. The West Riding shall consist of the Townships of Vespra, Flos, Sunnidale and Nottawasaga, the Towns of Barrie and Collingwood, and the Village of Stayner.
48. The South Riding shall consist of the Townships of Tosorontio, Essa, Innisfil and West Gwillimbury, and the Villages of Bradford and Alliston. 38 V. c. 2, s. 13.

THE COUNTY OF VICTORIA shall be divided into two Ridings, <sup>Victoria.</sup> to be called respectively the North Riding and the South Riding.

49. The North Riding shall consist of the Townships of Eldon, Carden, Dalton, Fenelon, Bexley, Laxton, Digby, Longford and Somerville; and the Provisional County of Haliburton, consisting of the following Townships:—Lutterworth, Anson, Hindon, Snowdon, Glamorgan, Monmouth, Cardiff, Minden, Dysart, Dudley, Harcourt, Stanhope, Guilford, Harburn, Bruton, Sherborne, Havelock, Eyre, Clyde, McClintock, Livingstone, Lawrence and Nightingale. 38 V. c. 2, s. 12.

50. The South Riding shall consist of the Townships of Ops, Mariposa, Emily, Verulam and the Town of Lindsay. B. N. A. Act, 1867, Sch. 1 (71).

Waterloo.

THE COUNTY OF WATERLOO shall be divided into two Ridings, to be called respectively the North Riding and the South Riding.

51. The North Riding shall consist of the northerly portion, hereinafter described, of the Township of Waterloo, the Townships of Woolwich and Wellesley, the Towns of Berlin and Waterloo. C. S. C. c. 2, s. 8 (13); 23 V. c. 40, s. 1.

52. The South Riding shall consist of the southerly portion of the said Township of Waterloo, the Townships of North Dumfries and Wilmot, the Town of Galt, and the Villages of Hespeler, New Hamburg and Preston.

Township of  
Waterloo.

The said northerly portion of the Township of Waterloo shall include and consist of that part of the said Township lying within the following limits, that is to say: Commencing at the south-west angle of lot number forty-six in the said Township; thence easterly along the southerly limits of the said lot, and of the lots numbers forty-seven, forty-eight, fifty, fifty-one and fifty-three, and the prolongation thereof, to the middle of the Grand River; thence along the middle of the said river, against the stream, to the prolongation of the limit between Lots numbers one hundred and thirteen and one hundred and fourteen, and along the prolongation of the limit between the said Lots numbers one hundred and thirteen and one hundred and fourteen, and along the limits between the said Lots numbers one hundred and thirteen and one hundred and fourteen, northerly and easterly, to the westerly limits of Lot one hundred and seven; thence along the westerly limits of the said Lot number one hundred and seven, northerly, to the northerly limits thereof; thence along the northerly limits of the said Lot number one hundred and seven, and of Lots numbers one hundred and six, eighty-four and nine-

ty-six, easterly, to the easterly boundary of the said Township; thence along the easterly, northerly and westerly boundaries of the said Township, in a northerly, westerly and southerly direction, respectively, to the place of beginning; And the said southerly portion of the said Township of Waterloo shall include and consist of all the remaining part of the said Township. C. S. C. c. 2, s. 8 (13).

That portion of the COUNTY OF WELLINGTON which remains Wellington, after constituting the County of Dufferin, shall be divided into three Ridings, to be called respectively the South Riding, the Centre Riding and the West Riding.

53. The South Riding shall consist of the Townships of Guelph, Puslinch and Eramosa, and the Town of Guelph.

54. The Centre Riding shall consist of the Townships of Pilkington, Nichol, Erin, West Garafraxa and Luther, and the Villages of Fergus and Elora.

55. The West Riding shall consist of the Townships of Arthur, Minto, Maryborough and Peel, the Town of Palmerston, and the Villages of Mount Forest, Harriston, Arthur, Clifford and Drayton. 38 V. c. 2, s. 10.

THE COUNTY OF WENTWORTH shall be divided into two Wentworth, Ridings, to be called respectively the North Riding and the South Riding.

56. The North Riding shall consist of the Townships of Beverly, Flamborough West, Flamborough East, and the Town of Dundas.

57. The South Riding shall consist of the Townships of Saltfleet, Binbrook, Glanford, Barton and Ancaster. C. S. C. c. 2, s. 8 (8).

THE COUNTY OF YORK shall be divided into three Ridings, to York, be called respectively the North Riding, the East Riding and the West Riding.

58. The North Riding shall consist of the Townships of King, Whitchurch, Georgina, East Gwillimbury and North Gwillimbury, and the Villages of Aurora, Holland Landing and Newmarket.

59. The East Riding shall consist of the Townships of Markham and Scarborough, that portion of the Township of York lying east of Yonge Street, and the Villages of Yorkville and Markham.



60. The West Riding shall consist of the Townships of Etobicoke and Vaughan, that portion of the Township of York lying west of Yonge Street, and the Village of Richmond Hill. C. S. C. c. 2, s. 8 (1); 38 V. c. 2, s. 19.

**15.** Each of the following tracts of territory shall form an Electoral District:—

Counties.

*Counties.*

The Counties of—

- |                |                    |
|----------------|--------------------|
| 61. CARLETON,  | 65. PRESCOTT,      |
| 62. DUNDAS,    | 66. PRINCE EDWARD, |
| 63. GLENGARRY, | 67. RUSSELL,       |
| 64. HALTON,    | 68. STORMONT.      |

Special provi-  
sion as to Car-  
leton and  
Russell.

- But the Townships of Gloucester and Osgoode and the Village of New Edinburgh shall, for the purpose of representation in the Legislative Assembly only, form part of the County of Russell, and not of the County of Carleton.  
C. S. C. c. 2, s. 9 (2); B. N. A. Act, 1867, Sch. 1 (1-8).

Addington.

69. THE COUNTY OF ADDINGTON,—to consist of the Townships of Camden, Portland, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, North and South Canonto, Ashby, Denbigh, Loughborough and Bedford, and the Village of Newburgh. B. N. A. Act, 1867, Sch. 1 (79). 23 V. c. 39, s. 3.

Cardwell

70. THE COUNTY OF CARDWELL,—to consist of the Townships of Caledon, Albion, Adjala and Tecumseth, and the Village of Bolton. 38 V. c. 2, s. 8.

Dufferin.

71. THE COUNTY OF DUFFERIN,—to consist of the Townships of Mono, Melancthon, Amaranth, East Garafraxa and Mulmur, and the Town of Orangeville. 38 V. c. 2, s. 7.

Frontenac.

72. THE COUNTY OF FRONTENAC,—to consist of the Townships of Kingston, Wolfe Island, Pittsburgh, Howe Island and Storrington, and the Villages of Garden Island and Portsmouth. B. N. A. Act, 1867, Sch. 1 (80).

Haldimand.

73. THE COUNTY OF HALDIMAND,—to consist of the Townships of Oneida, Seneca, Cayuga North, Cayuga

South, Rainham, Walpole and Dunn, and the Villages of Caledonia and Cayuga. B. N. A. Act, 1867, Sch. 1 (63).

74. THE COUNTY OF LENNOX,—to consist of the Townships Lennox. of Richmond, Adolphustown, North Fredericksburgh, South Fredericksburgh, Ernestown and Amherst Island, the Town of Napanee, and the Village of Bath. B. N. A. Act, 1867, Sch. 1 (78).

75. THE COUNTY OF LINCOLN,—to consist of the Town- Lincoln. ships of Clinton, Grantham, Grimsby, Louth and Niagara, the City of St. Catharines, the Town of Niagara, and the Villages of Grimsby, Merriton, and Port Dalhousie. B. N. A. Act, 1867, Sch. 1 (65); 38 V. c. 2, s. 18.

76. THE COUNTY OF MONCK,—to consist of the Townships Monck. of Canborough, Moulton, Sherbrooke, Caistor, Gainsborough, Pelham and Wainfleet, and the Village of Dunnville. B. N. A. Act, 1867, Sch. 1 (64).

77. THE COUNTY OF PEEL,—to consist of the Townships Peel. of Chinguacousy, Toronto and the Gore of Toronto, the Town of Brampton, and the Village of Streetsville. B. N. A. Act, 1867, Sch. 1 (67).

78. THE COUNTY OF WELLAND,—to consist of the Town- Welland. ships of Bertie, Crowland, Humberstone, Stamford, Thorold and Willoughby, the Towns of Clifton and Thorold, and the Villages of Chippewa, Fort Erie, Port Colborne, and Welland. B. N. A. Act, 1867, Sch. 1 (66).

*Districts.*

79. THE PROVISIONAL JUDICIAL DISTRICT OF ALGOMA. Algoma.  
B. N. A. Act, 1867, Sch. 1 (44).

80. THE ELECTORAL DISTRICT OF MUSKOKA AND PARRY Muskoka and  
Parry Sound.  
SOUND,—to consist of the territory bounded on the south by the middle of the main channel of the River Severn and a line formed by the southerly boundaries of the Townships of Morrison and Ryde, the easterly boundary of Ryde, the southerly boundary of the Township of Oakley, the easterly boundary of Oakley, and the southerly boundary of the Township of Ridout; bounded on the east by the Bobcaygeon road; on the north by Lake Nipissing and the middle of the main channel of the French River; and on the west by the waters of the Georgian Bay; and including therein the islands in the Georgian Bay lying west

of the said territory and adjacent thereto. 38 V. c. 2, s. 11.

Brockville. 81. THE ELECTORAL DISTRICT OF BROCKVILLE,—to consist of the Town of Brockville, the Township of Elizabethtown, the Township called Front of Yonge and the Township called Rear of Yonge and Escott. 38 V. c. 2, s. 17.

Cornwall. 82. THE ELECTORAL DISTRICT OF CORNWALL,—to consist of the Town of Cornwall and the Township of Cornwall. C. S. C. c. 2, s. 9 (8).

Cities. *Cities.*

83. THE CITY OF OTTAWA. C. S. C. c. 2, s. 9 (10).

84. THE CITY OF HAMILTON. C. S. C. c. 2, s. 9 (5).

85. THE CITY OF KINGSTON. C. S. C. c. 2, s. 9 (4).

86. THE CITY OF LONDON. C. S. C. c. 2, s. 9 (9).

Toronto. **16.** THE CITY OF TORONTO shall be divided into two Electoral Districts, to be called respectively—

87. EAST TORONTO, which shall consist of all that part of the said City lying east of the centre line of Yonge Street;

88. WEST TORONTO, which shall consist of all that part of the said City lying west of the centre line of Yonge Street. 23 V. c. 1, s. 3.

One Member each. **17.** Each of the above mentioned eighty-eight Electoral Districts shall be represented in the Legislative Assembly by one member. C. S. C. c. 2, s. 10 (2); 23 V. c. 1, s. 4; B. N. A. Act, 1867, s. 70; 38 V. c. 2, ss. 2, 4, 5, 6, 7, 9, 10, 11, 13.

---

## CHAPTER 9.

## An Act respecting Voters' Lists.

Short title, s. 1.

ALPHABETICAL LIST of voters to be made by Clerk of Municipality from the Assessment Roll, s. 2.

Copy to be posted in the Clerk's office and copies to be sent to certain persons to be posted up in the municipality, ss. 3-6.

Clerk to publish notice of date of posting in his office, s. 7.

REVISION OF ALPHABETICAL LIST BY THE COUNTY JUDGE :

Who may make complaint to Judge and on what grounds, s. 8.

Procedure in case of complaints, ss. 9, 10.

If no complaint Judge to certify three copies of the alphabetical list, s. 11.

If complaints made Judge to certify three copies of the list as revised by him, s. 12.

MISCELLANEOUS :

Municipality to provide a Court Room, s. 13.

Powers of Judge, ss. 14-18.

Abandonment of complaint by an

appellant and intervention of another, s. 19.

Costs of complaints, ss. 20, 21.

Order supplementing assessment roll to be made by the Judge where necessary, s. 22.

Failure of Clerk to perform duties not to vitiate list, s. 23.

Provision in case of such failure, s. 24.

PENALTIES—

For neglect by the Clerk of the Municipality, s. 25.

For wilful alteration of list, s. 26.

For colourable transfer of property to confer a vote, s. 27.

Recovery of penalties, s. 28.

Assessors to make inquiries before assessing persons claiming to be entitled to vote, s. 29.

Penalty for wrongfully assessing, or omitting from roll, s. 30.

Officers having custody of lists to furnish copies if required, s. 31.

Board of County Judges to make rules, s. 32.

Entry of certain words in list, s. 33.

Forms, s. 34.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. This Act may be cited as "*The Voters' Lists Act.*"

Short title.

2. The Clerk of each Municipality shall, immediately after the final revision and correction of the assessment roll in every year, make a correct alphabetical list in three parts (Form 1) of all male persons being of the full age of twenty-one years and subjects of Her Majesty by birth or naturalization, and appearing by the assessment roll to be entitled to vote in the Municipality, prefixing to the name of each person his number upon the roll. 39 V. c. 11, s. 1; 40 V. c. 12, s. 4.

(Clerk to make list of voters.

2. The first of the three parts shall contain the names, in alphabetical order, of all male persons of full age and subjects as aforesaid, appearing by the assessment roll to be assessed for the real property or income requisite to entitle them to

First part.

vote in the Municipality at both Municipal Elections and elections for members of the Legislative Assembly. 40 V. c. 12, s. 4 (a).

Second part. 3. The second part shall contain the names, in alphabetical order, of all other male persons of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the Municipality at Municipal Elections only, and not at elections for members of the Legislative Assembly. 40 V. c. 12, s. 4 (b).

Third part. 4. The third part shall contain the names, in alphabetical order, of all other male persons, of full age and subjects as aforesaid, appearing by the assessment roll to be entitled to vote in the Municipality at elections for members of the Legislative Assembly only, and not at Municipal Elections. 40 V. c. 12, s. 4 (c).

Lists for polling subdivisions. 5. Where a Municipality is divided into polling subdivisions the list (to be made in three parts as aforesaid) shall be made for each of such subdivisions. 39 V. c. 11, s. 1 (2); 40 V. c. 12, s. 5.

Real property to be named in the list. 6. If the qualification of any such person is in respect of real property, the Clerk shall, opposite the name of the person, insert, in the proper column of the voters' list, the number of the lot or other proper description of the real property in respect of which each person is so qualified; and in the case of the person being a farmer's son within the meaning of "*The Election Act*" and "*The Municipal Act*," the Clerk shall also, in the proper column of the voters' list, state that fact and the place at which the voter resides in the Municipality. 39 V. c. 11, s. 1 (3); 40 V. c. 9, s. 4. *part.*

Income. 7. If the qualification is in respect of income, the Clerk shall, in the proper column of the voters' list, state that fact and the place at which the voter resides in the Municipality. 39 V. c. 11, s. 1 (4).

Provision when property partly in one subdivision and partly in another. 8. Wherever it appears by the assessment roll that any person is assessed for property within the Municipality sufficient to entitle him to vote, but that it lies partly within the limits of one of such subdivisions and partly within another or others, the Clerk shall enter his name on the list of voters in each or every subdivision in which any part of such property is situate, with the following words added: "*See subdivision No. .*" 39 V. c. 11, s. 1 (5). *See* 32 V. c. 21, s. 27.

When assessment roll to be regarded as finally revised. 9. An assessment roll shall be understood to be finally revised and corrected, when it has been so revised and corrected by the Court of Revision for the Municipality, or by the Judge of the County Court, in case of an appeal, as provided in "*The Assessment Act*," or when the time during which such appeal may be made has elapsed, and not before. 39 V. c. 11, s. 1 (6); 40 V. c. 11, s. 12 (4).



3. Immediately after the Clerk has made the said alphabetical list, and within thirty days after the final revision and correction of the assessment roll, the Clerk shall cause at least two hundred copies of said list to be printed (in pamphlet form where practicable), and forthwith shall cause one of such printed copies to be posted up, and to be kept posted up in some conspicuous place in his own office, and deliver or transmit by post, by registered letter, or by parcel or book post, registered, three of such copies to each Judge of the County Court of the County to which for judicial purposes the municipality belongs; and two copies to each of the following persons, that is to say:—

Copies of list to be printed.

Copies to be posted in clerk's office, and copies to be sent to certain persons.

- a. Every member of the Municipal Council of the Municipality except the Reeve;
- b. The Treasurer thereof;
- c. The Sheriff of the County;
- d. The Clerk of the Peace;
- e. Every Postmaster in the Municipality;
- f. Every Head Master or Mistress of a Public or Separate School in the Municipality. 39 V. c. 11, s. 2.

4. The Clerk of the Municipality shall forthwith also deliver or transmit by post, by registered letter, or by parcel or book post, registered, ten of such copies to each of the following persons, that is to say:

Clerk of the municipality to transmit copies to certain persons.

- a. The Member of the House of Commons for the Electoral District in which the Municipality or any part thereof lies;
- b. The Member of the Legislative Assembly for the Electoral District in which the Municipality or any part thereof lies;
- c. Every candidate for whom votes were given at the then last election of a member for the House of Commons and for the Legislative Assembly respectively; and
- d. The Reeve of the Municipality. 39 V. c. 11, s. 2.

5. Upon each of the copies so sent to each person shall be a printed or written certificate (Form 2) over the name of the Clerk, stating that such list is a correct list of all persons appearing by the last revised assessment roll of the Municipality to be entitled to vote at elections for members of the Legislative Assembly; and further calling upon all electors to examine the said list, and, if any omissions or other errors are perceived therein, to take immediate proceedings to have the said errors corrected according to law. 39 V. c. 11, s. 2; 40 V. c. 10, s. 3.

On each copy the clerk to certify as to certain matters.

6. The Sheriff shall immediately upon the receipt of his copies cause one of them to be posted up in a conspicuous place in the Court-House; the Clerk of the Peace, upon receipt of his copies, shall cause one of them to be posted in a conspicuous place in his office; every Public or Separate School Head Master or Mistress shall in like manner post up one of his or her copies on the door of the school-house; and every Postmaster shall post up one of his copies in his post-office. 39 V. c. 11, s. 2.

She iff. clerk of the peace, teacher and postmaster to post up a copy.

Clerk to publish notice of first posting up by him.

7. The Clerk shall also forthwith cause to be inserted in some newspaper published in the Municipality, or in case no newspaper is published in the Municipality, then in some newspaper published in the Municipality next thereto, or in the County Town, a notice (Form 3), signed by him, which shall state that he has delivered or transmitted the copies of said list as directed by this Act, and shall also mention the date of the first posting up of said list in his office. One insertion of such notice shall be sufficient. 39 V. c. 11, s. 3; 40 V. c. 10, s. 2.

Revision of list.

8. The said list of voters shall be subject to revision by the County Judge, at the instance of any voter or person entitled to be a voter in the Municipality for which the list is made, or in the Electoral District in which the Municipality is situate, on the ground of the names of voters being omitted from the list, or being wrongly stated therein, or of names of persons being inserted on the list who are not entitled to vote; and upon such revision, the assessment roll shall not be conclusive evidence in regard to any particular, whether the matter on which the right to vote depends had or had not been brought before the Court of Revision, or had or had not been determined by that Court; and the decision of the Judge under this Act, in regard to the right of any person to vote, shall be final so far as regards such person.

Appeal in case of persons disqualified under Rev. Stat. c. 10.

2. A complaint or appeal (Form 4) may be made on the ground of any person whose name is entered on the list being one of those who are disqualified or incompetent to vote under "*The Election Act*."

Applications by persons who have acquired or have parted with property since assessment.

3. If any person named as a voter in the said list has, before the final revision and correction of the assessment roll, parted with the property in respect of which his name was entered in the voters' list, the person to whom he has transferred the property, or who is in possession of the same, shall be entitled to apply (Form 5) to the Judge to be entered on the list instead of the person originally named therein; and the person who has parted with such property may apply to the Judge to be entered on the list in respect of any other property which he may have acquired in the Municipality and for which he has not been assessed, or in respect of income; and the proceedings to be taken in such case shall be the same as in cases of appeals under this Act. 39 V. c. 11, s. 4; 40 V. c. 10, s. 4.

Persons who will be of age within 60 days from revision of assessment roll.

4. Any person who is rated, or liable to be rated, on the assessment roll, for real property or income of the amount requisite to entitle him to vote, and who will be of the age of twenty-one years at any time within sixty days from the final revision and correction of the assessment roll, shall be entitled to apply to the Judge to have his name entered upon the voters' list or upon the assessment roll and the voters' list, as the case may require. 40 V. c. 10, s. 4 (2).

5. A farmer's son entitled to be assessed under "*The Assessment Act*" shall, in all respects and for all purposes, have the right to apply and complain to the Judge on the revision of the voters' lists, and to have his name entered and inserted in the list in the same manner and with the same effect as if he were actually and *bona fide* a joint or separate owner, tenant, or occupant as the case may be, of the farm in respect of which he is entitled to be entered in the assessment roll. 40 V. c. 9, s. 4.

Farmers' sons, assessed under Rev. Stat. c. 180, s. 20.

9. Any voter or person entitled to be a voter making any complaint of any error or omission in the said list shall, within thirty days after the Clerk of the Municipality has posted up the said list in his office, give to the Clerk or leave for him at his residence or place of business, notice (Form 6) in writing of his complaint and intention to apply to the Judge in respect thereof; and if the office of Clerk is vacant by reason of death, resignation or from any other cause, such notice may be given in like manner to the head of the Council of the Municipality; and the proceedings thereafter by the Clerk, Judge, and parties respectively, and the respective powers and duties of the Judge, Clerk and other persons, shall be the same, or as nearly as may be the same, as in the case of an appeal from the Court of Revision; but no deposit shall be required to be made before any such complaint is heard or disposed of. (See Forms 7-12.)

Proceedings on person complaining of errors in the list.

2. If the notice is given to or left for the head of the Council, he shall perform or cause to be performed such necessary acts as should be performed by the Clerk if there were one. 39 V. c. 11, s. 5; 40 V. c. 10, s. 1.

The case of notice left with head of the Council.

10. Any party may obtain from the County Court a subpoena (Form 13), or from the County Judge an order, requiring the attendance at the Court for hearing complaints as aforesaid, at the time mentioned in such subpoena or order, of a witness residing or served with such subpoena or order in any part of this Province; and requiring any such witness to bring with him and produce at the Court any papers or documents mentioned in the subpoena or order; and every witness served with such subpoena or order shall obey the same, provided the allowance for his expenses, according to the scale allowed in Division Courts, is tendered to him at the time of service.

Compelling attendance of witnesses on revision of list.

2. Any person complaining, or any person in respect of the insertion or omission of whose name a complaint is made, shall, if resident within the Municipality the list of which is the subject of complaint, or within the Municipality in which the Court is held, upon being served with a subpoena or order therein, obey the same without being tendered or paid any allowance for his expenses.

Person whose right is in question to attend.

Penalty on non-attendance of the person whose right is in question.

3. If any person, whose right to be a voter is the subject of inquiry does not attend in obedience to such subpoena or order, the Judge, if he thinks fit, in the absence of satisfactory evidence as to the ground of such non-attendance, or as to the right of such person to be a voter, may, on the ground of the non-attendance of such person, strike his name off the list of voters, or refuse to place his name on the list of voters, as the case may require, or impose a reasonable fine on such person according to his discretion, or do both.

Insertion of several names in subpoena.

4. Any number of names may be inserted in one subpoena or Judge's order, in any case of complaint. 39 V. c. 11, s. 7.

List confirmed if no complaint within 30 days after the Clerk has posted up the list.

11. In case no complaint respecting such list is received by the Clerk of the Municipality, within thirty days after he has posted up the said list in his office, the said Clerk shall forthwith apply (Form 14), either in person or by letter, to the Judge to certify (Form 15) three copies of such list as being the revised list of voters for the Municipality; and the Judge shall retain one of such certified copies of the list, and deliver or transmit by post, registered, one of such certified copies to the Clerk of the Peace for the County or Union of Counties within which the Municipality lies, and one of such certified copies to the Clerk of the Municipality, to be kept by him among the records of his office. 39 V. c. 11, s. 6.

After final revision, Judge to make statement of alterations and certify copies of list.

12. In case complaints are made as aforesaid, immediately after the list has been finally revised and corrected by the Judge, the Judge shall make or cause to be made, and shall sign, a statement (Form 16) in triplicate, setting forth the changes, if any, which he has made in the list; and shall certify in triplicate (Form 17) a corrected copy of the list.

How the Judge shall dispose of the statements and copies

2. The Judge shall retain one of such certified copies and one statement, and shall deliver or transmit by post, registered, one of such certified copies and one statement to the Clerk of the Peace for the County or Union of Counties within which the Municipality lies, and one of such certified copies and one statement to the Clerk of the Municipality, to be kept by him among the records of his office. 39 V. c. 11, s. 8.

#### MISCELLANEOUS PROVISIONS.

Municipality to provide a court room.

13. It shall be the duty of the Municipality within which a Court is holden, to provide some suitable and convenient place, properly furnished, heated and lighted for the holding of such Court, and in case such is not done the Judge may hold said Court at such other place in the County as he may deem proper; and if the same is held elsewhere than in the County Court-House, the proprietor or proprietors of the building in which it is held may recover from the Municipality which should have made such provision the sum of five dollars for



each and every day during which such building is used for the purposes of such Court. Any Court held in the County Town shall be held in the County Court House, or in such other place in said County Town as the Judge may deem proper. Courts in county towns. 39 V. c. 11, s. 16.

**14.** In all proceedings before the Judge under this Act, the Judge shall have, with reference to the matters herein contained, all the powers which belong to or might be exercised by him in the County Court. Powers of Judge. 39 V. c. 11, s. 17.

**15.** The Judge shall have power to appoint some proper person to attend at the sitting of the Court as a Constable or Bailiff; and the duties and powers of such person thereat shall be as nearly as may be the same as those of the Bailiff of a Division Court at a sitting of a Division Court and in reference thereto; and the expenses of the person so appointed and attending shall be borne by the Municipality the list for which is the subject of investigation, and shall include such allowance for loss of time, trouble and travelling fees as may be certified by the Judge to be reasonable; and the amount certified by the Judge shall be paid to such person by the Treasurer of the Municipality upon the production and deposit with him of the Judge's certificate. Appointment of Constable, duties, expenses. 39 V. c. 11, s. 18.

**16.** The Clerk of every Municipality shall be subject to the summary jurisdiction and control of the County Judge in respect to the performance of his duty under this Act, and in respect to every act required to be performed by such Clerk touching the voters' list, in the same manner as officers of the County Court are to the Court; and the Clerk shall receive reasonable compensation for the services performed. Clerk to be subject to the summary jurisdiction of the Judge. Clerk's compensation. 39 V. c. 11, s. 19.

**17.** If the Judge who holds a Court believes or has good reason to believe that any person or persons have contravened the twenty-seventh or thirtieth sections of this Act, or that frauds in respect to the assessment or the voters' lists have prevailed extensively in the Municipality, it shall be his duty to report the same to the Provincial Secretary, with such particulars as to names and facts as he may think proper. Report by Judge as frauds, &c 39 V. c. 11, s. 20.

**18.** The Judge shall have power to amend any notice or other proceeding upon such terms as he may think proper. Amendment. 39 V. c. 11, s. 21.

**19.** If any appellant or complainant entitled to appeal dies or abandons his appeal or complaint, or having been on the alphabetical list made and posted by the Clerk as aforesaid is afterwards found not to be entitled to be an appellant, the Judge may, if he thinks proper, allow any other person who might have Abandonment by appellant and intervention of some other



been an appellant or complainant to intervene and prosecute such appeal or complaint, upon such terms as the Judge may think just. 39 V. c. 11, s. 12.

Costs occasioned by errors may be ordered to be paid by guilty parties.

**20.** In case of errors being found in the said voters' list on the said revision thereof, whether such errors are in the omission of names, the inaccurate entry of names, or the entry of names of persons not entitled to vote, if it appears to the Judge that the Assessor was blameable for any of the said errors, the Judge shall order (Form 18) the Assessor, either alone or jointly with any other person, to pay all costs occasioned by the same; and in case of errors for which the Clerk was to blame, the Clerk, either alone or jointly with any other person, shall be charged with the costs; and in case of errors of the Court of Revision, the Municipality shall, either alone or jointly with any person, pay the costs, subject to any claim which the Municipality may justly have against the guilty parties; or the Judge may order the Assessor, Clerk or Municipality in any such case, to pay the costs, if any party fails to recover the same from any other party named and ordered to pay the same; and, in all cases not herein provided for, the costs shall be in the discretion of the Judge.

Division Court costs only allowed.

**2.** No costs shall be allowed on any proceeding under this Act, other or higher than would be allowed in the Division Court under the lowest scale of costs in actions therein.

Liability of appellant for costs.

**3.** The only costs to which an appellant shall be liable shall be the witness fees, unless in a case of bad faith on his part. 39 V. c. 11, s. 13.

Costs, payment of, how enforced.

**21.** The payment of any costs ordered to be paid by the Judge may be enforced by an execution (Form 19) against goods and chattels, to be issued from any County Court upon filing therein the order of the Judge, and an affidavit showing the amount at which such costs were taxed and the non-payment thereof. 39 V. c. 11, s. 14.

Persons whose names omitted from roll and inserted on revision liable to pay taxes.

Judge's order.

**22.** If any person not assessed, or not sufficiently assessed, is found entitled to vote, the Municipality shall be entitled to recover taxes from him, and to enforce payment thereof by the same means and in the same manner as if he had been assessed on the roll for the amount found by the Judge; and the Judge shall make an order (Form 20), setting forth the names of the persons so liable, and the sum for which each person should have been assessed, and the land or other property in respect of which the liability exists, and each order shall be transmitted to the Clerk of the Municipality, and shall have the same effect as if the said particulars had been inserted in the roll. 39 V. c. 11, s. 15.

Failure of Clerk to perform duties

**23.** The times appointed for the performance, by the Clerk of the Municipality, of the duties required of him by this Act,

shall be directory only to the said Clerk; and the non-performance by him of any of the said duties within the times appointed, shall not render null, void or inoperative any of the lists in this Act mentioned. 39 V. c. 11, s. 10.

not to vitiate list.

**24.** In case the Clerk of any Municipality fails to perform any of the duties aforesaid, the Clerk of the Peace shall forthwith apply (Form 21) summarily to the County Judge or the Junior or acting Judge of the County Court for the County within which such Municipality is situate, to enforce the performance of the same.

Provision in case Clerk of Municipality fails to perform duties.

2. The application may also be made by any person entitled to be named as an elector on the list in respect of which the application is made.

Elector may apply

3. The Judge shall, on such application, require (Form 22) the Clerk of the Municipality, and any other person he sees fit, to appear before him and produce the assessment roll, and any documents relating thereto, or to the list in respect to which the application is made, and to submit to such examination on oath as may be required of him or them, and the Judge shall thereupon make such orders and give such directions as he may deem necessary or proper for the purposes aforesaid.

Judge may require Clerk or other person to appear and submit to examination, &c.

4. The Clerk of the Municipality shall be personally liable for and shall pay the costs of the proceedings, unless on some special grounds the Judge shall see fit to order otherwise, and in such special case the costs shall be in the discretion of the Judge.

Liability of Clerk for costs.

5. Such proceedings and such order of the Judge shall not in anywise exonerate or release the Clerk from liability to the penalty hereinafter imposed. 39 V. c. 11, s. 11.

Judge's order not to release Clerk from penalty under s. 25.

**25.** If any Clerk of a Municipality omits, neglects or refuses to complete the voters' lists, or to perform any of the duties hereinbefore required of him for his Municipality, such Clerk, for each such omission, neglect or refusal, shall incur a penalty of two hundred dollars. 39 V. c. 11, s. 24.

Penalty on Clerk for neglect, &c.

**26.** If any Clerk of a Municipality, or Clerk of the Peace, or any other person wilfully makes any alteration, omission or insertion, or in any way wilfully falsifies any such certified list or copy, or permits the same to be done, every such person shall incur a penalty of two thousand dollars. 32 V. c. 21, s. 11; 39 V. c. 11, s. 25.

Clerks, &c. wilfully falsifying lists to incur a penalty.

**27.** No person shall make, execute, accept or become a party to any lease, deed or other instrument, or become a party to any verbal arrangement, whereby a colourable interest in any land, house or tenement is conferred, in order to qualify any person to vote at an election; and any person violating the

Colourable transfer of property in order to confer vote.

provisions of this section, besides being liable to any other penalty prescribed in that behalf, shall incur a penalty of one hundred dollars, and any person who induces, or attempts to induce another to commit an offence under this section, shall incur a like penalty. 39 V. c. 11, s. 26. *See also Rev. Stat. c. 10, s. 170.*

Recovery of penalties.

**28.** The penalties mentioned in the three next preceding sections may be recovered with costs of suit by any person suing for the same in any Court of competent jurisdiction. 39 V. c. 11, s. 27.

Assessor to make enquiries before assessing persons claiming to be assessed.

**29.** To prevent the creation of false votes, where any person claims to be assessed, or claims that any other person should be assessed, as owner or occupant of any parcel of land, or as possessing the income which entitles him to vote in the Municipality at an election and the Assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed, it shall be the duty of the Assessor to make reasonable enquiries before assessing such person. 39 V. c. 11, s. 28. *See also Rev. Stat. c. 180, s. 40.*

Penalty on assessor for wrongfully assessing or omitting to assess.

**30.** Any Assessor who wilfully and improperly inserts any name in the assessment roll, or assesses any person at too high an amount, with intent in either case to give to any person not entitled thereto an apparent right of voting at any election, or who wilfully inserts any fictitious name in the assessment roll, or who wilfully and improperly omits any name from the assessment roll, or assesses any person at too low an amount, with intent in either case to deprive any person of his right to vote, shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine is paid, or to imprisonment in the Common Gaol of the County or City, for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. 39 V. c. 11, s. 29.

Clerks of the Peace and of municipalities to furnish copies of last revised voters' list.

**31.** The Clerk of the Peace and the Clerk of any Municipality having the custody of the list of voters of any Municipality or part of any Municipality or place, shall furnish a certified copy of such list, then last revised and corrected, or of any of the parts thereof, to any person who may require such copy or part, on being paid for the same by such person at the rate of four cents for every ten voters whose names are on such list or part: the said officers may furnish printed copies for each of which they shall be entitled to receive six cents instead of the fee aforesaid; and the officers shall verify any alterations made therein, by writing their initials in close proximity thereto. If the alterations or interlineations exceed one hundred, it shall be the duty of the said officers to furnish written copies.

2. For each copy of the voters' list or of any of the parts thereof furnished to the Returning Officer, according to Form 8 in Schedule A. to "*The Election Act*," or according to Schedule C to "*The Municipal Act*," the Clerk of the Peace furnishing the same shall be entitled to receive the sum of six cents for every ten voters whose names are on such list or part as the case may be. 39 V. c. 11, s. 23; 40 V. c. 12, s. 10.

Fees to Clerk of the Peace for copy of voters' lists. See Rev. Stat. c. 10, s. 56, or c. 174, ss. 28, 129.

32. The Board of County Judges may, if requested so to do by the Lieutenant-Governor, frame Rules and Forms of procedure for the purpose of better carrying this Act into effect; and such Rules and Forms shall, after being approved of by the Lieutenant-Governor in Council, have the same effect and force as if they formed part of this Act. 39 V. c. 11, s. 22.

Board of County Judges may make rules.

33. The words Householder (H), Freeholder (F), and Tenant (T), appearing on the assessment roll pursuant to the Assessment Act, shall, for the purposes of this Act, be held to also mean respectively Occupant (Oc.), Owner (O), or Tenant (T), and shall be so entered in the voters' list by the Clerk of the Municipality. 39 V. c. 11, s. 30. See Rev. Stat. c. 180, s. 18.

Words "Householder" &c. on roll how to be entered on list.

34. In carrying into effect the provisions of this Act, the forms set forth in the Schedule hereto may be used, and the same or forms to the like effect shall be deemed sufficient for the purposes mentioned in the said Schedule. 39 V. c. 11, s. 30.

Forms given in this Act may be used.

SCHEDULE OF FORMS.

FORM 1.

(Section 2.)

FORM OF VOTERS' LIST.

Voters' List, 18 Municipality of

POLLING SUB-DIVISION, No. 1, COMPRISING, &c. :—(Giving the limits.)

PART I.—Persons entitled to vote at BOTH Municipal Elections and Elections to the Legislative Assembly.				
No. on Roll.	Name.	Lot.	Con. or Street.	—
6	Anderson, Henry .....	N W $\frac{1}{4}$ 6	3	Owner.
14	Andrews, John .....	Wly 14 acres 8	1	Tenant.
1	Archer, James .....	2	6	Income.
50	Brown, Simon .....	W $\frac{1}{2}$ 9	2	Occupant.
71	Burton, Samuel .....	E $\frac{1}{2}$ 17	4	See Sub-Division, No.
	&c.	&c.	&c.	&c.



## PART II.—Persons entitled to vote at Municipal Elections ONLY.

No. on Roll	Name.	Lot.	Con. or Street.	—
4 82	Archer, Henry ..... Burke, Edmund ..... &c.	4 W $\frac{1}{2}$ 17 c.	3 4 &c.	Owner. Farmer's Son. &c.

## PART III.—Persons entitled to vote at Elections to the LEGISLATIVE ASSEMBLY ONLY.

No. on Roll	Name.	Lot.	Con. or Street.	—
43 8	Ackroyd, James ..... Ames, Joseph ..... &c.	N $\frac{1}{2}$ 3 3 &c.	4 7 &c.	Tenant. Owner. &c.

POLLING SUB-DIVISION, No. 2, COMPRISING, &c. :—(*Giving the limits.*)

## PART I.—Persons entitled to vote at BOTH Municipal Elections and Elections to the Legislative Assembly.

No. on Roll	Name.	Lot.	Con. or Street.	—
18 40	Akers, Dan ..... Broom, Ezekiel ..... &c.	8 13 &c.	4 7 &c.	Farmer's Son. Householder. &c.

## PART II.—Persons entitled to vote at Municipal Elections ONLY.

No. on Roll	Name.	Lot.	Con. or Street.	—
120 42	Heap, Uriah ..... Phazackerley, Hezekiah ..... &c.	12 3 &c.	4 7 &c.	Tenant. Freeholder. &c.

## PART III.—Persons entitled to vote at Elections to the LEGISLATIVE ASSEMBLY ONLY.

No. on Roll	Name.	Lot.	Con. or Street.	—

POLLING SUB-DIVISION, No. 3, COMPRISING, &c. :—(*Giving the limits.*)

&amp;c.

&amp;c.

&amp;c.



## FORM 2.

(Section 5.)

## CERTIFICATE TO BE ENDORSED ON VOTERS' LIST.

I, A. B., Clerk of the Municipality of \_\_\_\_\_, in the County of \_\_\_\_\_, do hereby certify that parts one and three of the within (or above) list constitute a correct list for the year 18\_\_\_\_ of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote at Elections for Members of the Legislative Assembly; and that parts one and two constitute a correct list for said year of all persons appearing by the said roll to be entitled to vote at Municipal Elections in said Municipality; and I hereby call upon all electors to examine the said list, and if any omissions or other errors are perceived therein, to take immediate proceedings to have the said errors corrected according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

A. B.,

*Clerk of*

40 V. c. 10, Sched. C.

## FORM 3.

(Section 7.)

## CLERK'S NOTICE OF FIRST POSTING OF VOTERS' LIST.

*Voters' List, 18\_\_\_\_.—Municipality of the \_\_\_\_\_ of \_\_\_\_\_  
County of \_\_\_\_\_*

Notice is hereby given, that I have transmitted or delivered to the persons mentioned in the third and fourth sections of "*The Voters' Lists Act*," the copies required by said section to be so transmitted or delivered of the list, made pursuant to said Act, of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote in the said Municipality at Elections for members of the Legislative Assembly and at Municipal Elections; and that said list was first posted up at my office, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and remains there for inspection.

Electors are called upon to examine the said list, and, if any omissions or any other errors are found therein, to take immediate proceedings to have the said errors corrected according to law.

Dated, &amp;c.

A. B.,

*Clerk of the said Municipality.*

40 V. c. 10, Sched. A.

## FORM 4.

(Section 8, Sub-sec. 2.)

## VOTER'S NOTICE OF COMPLAINT ON GROUND OF DISQUALIFICATION.

To the Clerk of the Municipality of the Town                      of                      .

I, *Angus Bell*, a voter (or "a person entitled to be a voter") in the said Municipality (or "for the Electoral District in which the Municipality is situated"), complain that the name of *John Jack* is wrongly entered in the Voters' List for the said Municipality, he being a person disqualified under the                      section of "*The Election Act*:" And take notice, that I intend to apply to the Judge in respect thereof, in pursuance of the statute in that behalf.

Dated the                      day of                      18                      .

ANGUS BELL,  
Residence—Township of *York*.

## FORM 5.

(Section 8, Sub-sec. 3.)

## NOTICE AND APPLICATION BY VOTER TO WHOM PERSON ASSESSED HAS TRANSFERRED PROPERTY.

To the Clerk of the Municipality of the Town                      of                      .

I, *Luke Doran*, a person entitled to be a voter in the said Municipality, complain that the name of *Peter Short* is wrongly inserted in the Voters' List for the said Municipality, he having before the final revision and correction of the Assessment Roll transferred to me the property in respect to which his name is entered on the said List (or "parted with the property in respect to which his name is entered on the Voters' List, and that I am in possession of the same"): And take notice, that I intend to apply to the Judge to have my name entered on the said List, instead of the said *Peter Short*, pursuant to the provisions of the statute in that behalf.

Dated the                      day of                      18                      .

LUKE LORAN.

FORM 6.

(Section 9.)

VOTER'S NOTICE OF COMPLAINT.

To the Clerk of the Municipality of the Town of

I, *James Smith*, a voter (or "person entitled to be a voter") for the Electoral District of \_\_\_\_\_, in which the said Municipality is situated, complain (*state the names of the persons in respect to whom complaint is made, and the ground of complaint touching each person respectively—or set forth in lists as follows, varying according to circumstances*), that the several persons whose names are set forth in the subjoined list No. 1 are entitled to be voters in the said Municipality, as shown in said list, but are wrongfully omitted from the Voters' List : That the several persons whose names are mentioned in the first column of the subjoined list No. 2 are wrongly stated in the said Voters' List, as shown in said list No. 2 :—That the several persons whose names are set forth in the first column of the subjoined list No. 3 are wrongfully inserted in the said Voters' List, as shown in said list No. 3 :—And that there are errors in the description of the property in respect to which the names respectively are entered on the Voters' List (*or stating other errors*), as shown in the subjoined list No. 4 :—And take notice, that I intend to apply to the Judge in respect thereof, pursuant to the statute in that behalf.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

JAMES SMITH,  
Residence—Township of *Beby*.

*Lists of Complaints mentioned in the above Notice of Complaint.*

LIST NO. 1 (*shewing voters wrongfully omitted from the Voters' List.*)

NAMES OF PERSONS.		GROUND ON WHICH THEY ARE ENTITLED TO BE ON THE VOTERS' LIST.
James Tupper ....	Tenant to John Frazer, of N. $\frac{1}{2}$ lot 1, 2nd Con.	
Simon Beauclerk...	Owner in fee of N. W. $\frac{1}{4}$ lot 6, in 8th Con.	
Angus Blain.....	Assessed too low—property worth \$	

LIST NO. 2 (*shewing voters wrongly named in Voters' List.*)

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST.	THE ERRORS IN STATEMENT UPON VOTERS' LIST.
Joshua Townsend.	2	1	Should be <i>Joseph</i> Townsend.
John McBean ....	4	1	Should be John McBean <i>the younger</i> .
S. Connell.....	3	2	Should be <i>Simon</i> O'Connell.
			&c., &c.

LIST NO. 3 (*showing persons wrongfully inserted in the Voters' List*).

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST.	STATEMENT WHY WRONGFULLY INSERTED IN VOTERS' LIST.
Peter White.....	4	1	Died before final revision of roll.
John May.....	3	2	Tenancy expired—left the country.
David Walters....	2	2	Assessed too high—property worth under \$ &c., &c.

LIST NO. 4 (*showing voters whose property is erroneously described in Voters' List, &c.*).

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST.	ERRORS IN RESPECT TO PROPERTY OR OTHERWISE STATED.
Stephen Washburn	3	2	Name should be in Subdivision No. 2.
Thomas Gordon ..	2	1	Property should be W. $\frac{1}{2}$ lot 7, in 3rd Con.
Ronald Blue.....	4	2	Should be described as owner, not tenant.

## FORM 7.

(Section 9.)

## CLERK'S REPORT IN CASE OF APPEALS AND COMPLAINTS TO THE JUDGE.

To His Honour the Judge of the County Court of the County of

The Clerk of the Municipality of \_\_\_\_\_ states and reports that the several persons mentioned in column 1 of the Schedule below, and no others, have each given to him (*or* "left for him at his residence *or* place of abode," *as the fact may be*) written notice complaining of errors or omissions in the Voters' List for the said Municipality for 18\_\_\_\_, on the grounds mentioned in column 2 of the said Schedule, and that such notices were received respectively at dates set down in column 3 of the said Schedule.

Dated, &amp;c.

A. B.,  
Clerk of the said Municipality.

Schedule.

1. NAME OF COMPLAINANTS.	2. ERRORS OR OMISSIONS COM- PLAINED OF.	3. DATE WHEN NOTICE OF COM- PLAINT RECEIVED BY CLERK

FORM 8.

(Section 9.)

JUDGE'S ORDER APPOINTING COURT FOR HEARING COMPLAINTS AND APPEALS.

To \_\_\_\_\_, Clerk of the Municipality of the \_\_\_\_\_

Upon reading your Report and notification respecting the Voters' List for the said Municipality for 18\_\_\_\_, pursuant to the statute in that behalf, I appoint the \_\_\_\_\_ of \_\_\_\_\_ 18\_\_\_\_, at the hour of \_\_\_\_\_ at \_\_\_\_\_ in the said County, for holding a Court to hear and determine the several complaints of errors and omissions in the said Voters' List, of which due notice has been given.

You are constituted Clerk of the Court.  
You will advertise the holding of such Court, and post up in your office or the place in which the Council hold their sittings a list of all complaints of errors and omissions in the said Voters' List; and you will notify all parties concerned according to law.

Let the Assessor for the Municipality attend the sittings of the said Court, and let the original Assessment Roll of the Municipality for 18\_\_\_\_, and the minutes of the Court of Revision for the Municipality for 18\_\_\_\_, be produced before me or the acting Judge, on the day and at the place above mentioned.

Dated \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

\_\_\_\_\_  
*Judge Co. Court, Co. of \_\_\_\_\_*

FORM 9.

(Section 9.)

NOTICE TO BE POSTED BY CLERK IN HIS OFFICE WITH LIST OF COMPLAINTS.

Notice is hereby given, that a Court will be held, pursuant to "*The Voters' Lists Act*," at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_ o'clock, for the purpose of hearing all complaints made against the Voters' List for the Municipality of \_\_\_\_\_ for 18\_\_\_\_, particulars of which complaints are shown in the subjoined Schedule.

All persons having business at the Court are hereby required to attend at the said time and place.

Dated, &c. \_\_\_\_\_  

A. B.,  
Clerk of the said Municipality.

*Schedule.*

NAME OF PARTY COMPLAIN- ING	NAME OF PERSON IN RESPECT TO WHOM APPEAL WAS MADE.	GROUNDS OF COMPLAINT ALLEGED.



## FORM 10.

(Section 9.)

## CLERK'S ADVERTISEMENT OF COURT IN NEWSPAPER.

Notice is hereby given, that a Court will be held, pursuant to "*The Voters' Lists Act*," by His Honour the Judge of the County Court of the County of \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_ o'clock, to hear and determine the several complaints of errors and omissions in the Voters' List of the Municipality of \_\_\_\_\_ for 18\_\_\_\_.

All persons having business at the Court are required to attend at the said time and place.

Dated, &amp;c.

A. B.,  
Clerk of the said Municipality

## FORM 11.

(Section 9.)

## CLERK'S NOTICE TO PARTY COMPLAINING.

*The Voters' List Act.*

You are hereby notified that, pursuant to the Statute in that behalf, a Court for the Revision of the Voters' List, 18\_\_\_\_, for the Municipality of \_\_\_\_\_, will be held by the Judge (or acting Judge) of the County Court of the County of \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ o'clock, at which Court all complaints duly lodged of any error or omission in the said List will be heard and determined. A list of said complaints is posted up in \_\_\_\_\_ and you are hereby required to be and appear at such Court; and take notice, that the Judge may proceed to hear and determine the complaints, whether the parties complaining appear or not.

By order of his Honour the Judge of the County Court of the County of \_\_\_\_\_

Dated \_\_\_\_\_ day of \_\_\_\_\_ 187 .

To

A person complaining of error in the  
said Voters' List. }

A. B.,  
Clerk of the Municipality of \_\_\_\_\_, and  
constituted Clerk of said Court.

## FORM 12.

(Section 9.)

## CLERK'S NOTICE TO PARTY COMPLAINED AGAINST.

*"The Voters' Lists Act."*

You are hereby notified that, pursuant to the Statute in that behalf, a Court for the Revision of the Voters' List, 18\_\_\_\_, for the Municipality of \_\_\_\_\_, will be held by the Judge (or acting Judge) of the County

Court of the County of \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ o'clock, and you are required to appear at the said Court, for that \_\_\_\_\_ has complained that your name \_\_\_\_\_ is wrongly inserted in the said Voters' List ("because," &c., *state matter of complaint concisely*). A list of all complaints lodged is posted up in \_\_\_\_\_; and take notice, that the Judge may proceed to hear and determine the said complaint, whether you appear or not.

By order of his Honour the Judge of the County Court of the County of \_\_\_\_\_.

To

Entered on said Voters' List.

A. B.,  
*Clerk of the said Municipality, and constituted  
Clerk of the said Court.*

### FORM 13.

(Section 10.)

SUBPENA.



ONTARIO :	}	VICTORIA, by the Grace of God, of the United
County of _____	}	Kingdom of Great Britain and Ireland
To Wit.	}	Queen, Defender of the Faith.

To \_\_\_\_\_ Greeting :

We command you, that, all excuses being laid aside, you be and appear in your proper person before our Judge of our County Court of the County of \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at a Court appointed, and there and then to be held, for hearing complaints of errors in the Voters' List for 18\_\_\_\_, of the Municipality of the \_\_\_\_\_ of \_\_\_\_\_, in the County of \_\_\_\_\_, and for revision of the said Voters' List, \_\_\_\_\_, then and there to testify to all and singular those things which you know in a certain matter (*or matters*) of complaint made and now depending before the said Judge, under "*The Voters' Lists Act*," wherein one \_\_\_\_\_ is complainant, and which complaint is to be tried at the said Court. Herein fail not.

Witness, His Honour \_\_\_\_\_, Judge of our said Court at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

A. B.,  
*Clerk.*

### FORM 14.

#### REPORT OF CLERK WHEN APPLYING FOR CERTIFICATE UNDER SECTION 11.

To the Judge of the County Court of the County of \_\_\_\_\_.

I, \_\_\_\_\_, Clerk of the Municipality of \_\_\_\_\_, in the said County of \_\_\_\_\_, do hereby certify as follows :

That I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, post up, and for a period of thirty days next thereafter keep posted up, in a conspicuous place in my office at \_\_\_\_\_, a true and correct printed copy of the Voters' List for the said Municipality of \_\_\_\_\_ for 18\_\_\_\_, made in pursuance of "*The Voters' Lists Act*," with the certificate required by section five of the said Act endorsed thereon.

That I did also duly deliver and transmit by post, by registered letter (or, "by parcel post registered," or, "by book post"), the required number of similar printed copies of the said Voters' List, with my certificate endorsed, to each and all of the persons entitled to the same under sections three and four of said Act.

That I did on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, cause to be inserted in the newspaper called the "*\_\_\_\_\_*," published in \_\_\_\_\_, the notice required by section seven of the said Act.

That no person gave me nor did I receive any written notice of complaint and intention to apply to the Judge or Junior or acting Judge of the County Court of said County of \_\_\_\_\_ in respect to the said Voters' List within thirty days after I, the said Clerk, had posted up the said List in my office, as directed by the provisions of the said Act.

And that to the best of my knowledge and belief, I have complied with the several requirements of the said Act, so as to entitle me to apply for certified copies under the eleventh section of the said Act; and I do hereby, in pursuance thereof, now apply to you the said Judge to certify three of the copies of the said List received by you as being the Revised List of Voters for the Municipality of the said \_\_\_\_\_ of \_\_\_\_\_ for the year of our Lord 18\_\_\_\_.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

\_\_\_\_\_  
Clerk of the Municipality of \_\_\_\_\_,

\_\_\_\_\_  
P. O.

39 V. c. 11, *Sched.* ; 40 V. c. 10, s. 1.

FORM 15.

(Section 11.)

CERTIFICATE OF NO COMPLAINTS.

County of \_\_\_\_\_

A. B., Clerk of the Municipality of the \_\_\_\_\_ of \_\_\_\_\_, having certified under his hand that no complaint respecting the List of Voters for said Municipality, for the year 18\_\_\_\_, had been received by him within thirty days after the first posting up of the same; and on application of the Clerk,

I, \_\_\_\_\_, Judge of the County Court of the County of \_\_\_\_\_ in pursuance of the provisions of "*The Voters' Lists Act*," certify that the annexed printed List of Voters, being one of the copies received by me from the said Clerk, under section three of the said Act, is the Revised List of Voters for the said Municipality for the year 18\_\_\_\_.

Given under my hand and seal, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

\_\_\_\_\_  
Judge.

## FORM 16.

. (Section 12).

## STATEMENT OF ALTERATIONS BY JUDGE.

Be it remembered, that upon a final revision and correction of the List of Voters of the Municipality of the \_\_\_\_\_ of \_\_\_\_\_ for the year 18\_\_\_\_, pursuant to the provisions of "*The Voters' Lists Act*," the following changes were duly made by me in the copies of the said list received by me from the Clerk of the said Municipality, viz.:

1. The following persons are added to the said List :—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPERTY.

2. The following persons are struck off the said List :—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPERTY.

3. The following changes are made in the property described opposite to the names of voters otherwise correctly inserted :—

NAME.	POLLING SUB-DIVISION.	PART OF LIST.	PROPERTY AS ORIGINALLY DESCRIBED ON LIST.	PROPERTY AS ALTERED.

4. The following changes are made in the names of voters incorrectly named :—

NAME ORIGINALLY ON LIST.	POLLING SUB-DIVISION.	PART OF LIST.	NAME AS ALTERED.	PROPERTY.

Witness my hand this

day of

A.D., 18\_\_\_\_

County Judge, County of \_\_\_\_\_.

## FORM 17.

(Section 12.)

## CERTIFICATE OF JUDGE.

I, \_\_\_\_\_, Judge of the County Court of the County of \_\_\_\_\_, pursuant to the twelfth section of "*The Voters' Lists Act*," do hereby certify that the above (as the case may be) is a corrected copy of the List of Voters, for the year 18\_\_\_\_, received by me from the Clerk of the Municipality of the \_\_\_\_\_ of \_\_\_\_\_, according to my revision and correction thereof, pursuant to the provisions of the said Act.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

\_\_\_\_\_  
Judge.

## FORM 18.

(Section 20.)

## ORDER FOR PAYMENT OF COSTS.

"*The Voters' Lists Act*."

In the matter of the Voters' List for the Municipality of \_\_\_\_\_, 18\_\_\_\_, and of the complaint and appeal to the Judge of the County Court of the County of \_\_\_\_\_, by \_\_\_\_\_ B., complaining of the name of C. D. being wrongly inserted in the said List (or, as the case may be, stating in brief the nature of the complaint).

On proceedings taken before me, pursuant to the said Act, I find and adjudge that the name of the said C. D. was rightly inserted in the said List (or, "was wrongly inserted in the said List"), and order that the said A. B. do pay the said C. D. his costs occasioned by the said complaint (or, "and order that the said C. D. shall pay the said A. B. his costs incident to the said complaint,"—or, "and order that E. F., the Assessor of the said Municipality, being blameable for such wrong insertion, do pay the said A. B. his costs incident to the said complaint,"—or, as the order may be, stating it in brief), said costs to be taxed pursuant to the said Act.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

\_\_\_\_\_  
Judge.

## FORM 19.

(Section 21.)

## WRIT OF EXECUTION.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the \_\_\_\_\_

GREETING :

We command you that of the goods and chattels in your bailiwick of C. D., you cause to be made \_\_\_\_\_ dollars, for certain costs which



lately, by an order of His Honour \_\_\_\_\_, Judge of the County Court of \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, were ordered to be paid by the said C. D. to A. B., as and for his costs sustained by him on the trial of a complaint against the Voters' List for the Municipality of \_\_\_\_\_, in the said County, for 18\_\_\_\_, made and prosecuted under the provisions of "*The Voters' Lists Act*," which said costs have been taxed and allowed at the said sum, as appears of record; and have that money before Our Judge of Our said Court at \_\_\_\_\_ immediately after the execution hereof; and in what manner you shall have executed this Our writ, make appear to Our Judge aforesaid at \_\_\_\_\_ immediately after the execution thereof, and have you there then this writ.

Witness, His Honour \_\_\_\_\_, Judge of Our said Court, at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 18\_\_\_\_.

A. B.,  
*Clerk.*

FORM 20.

(Section 22.)

ORDER FOR ASSESSMENT OF PERSONS OMITTED FROM ROLL, &c.

In the matter of Assessment for the year 18\_\_\_\_, in the Municipality of \_\_\_\_\_  
The persons mentioned in the first column of the Schedules following not being assessed, or not being sufficiently assessed, on the Assessment Roll of the Municipality of \_\_\_\_\_, for the year 18\_\_\_\_, and having been found entitled to vote, on proceedings taken before me, Judge of the County of \_\_\_\_\_, under "*The Voters Lists Act*"—  
In pursuance of the twenty-second section of the said Act, it is adjudged that the said parties mentioned in the first columns of the following Schedules respectively should have been assessed for the sums mentioned in the second columns respectively opposite their respective names, in respect to the land or other property or qualification mentioned in the third columns of said Schedules respectively opposite the respective names of said parties, and it is ordered that the said parties should be assessed accordingly.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18\_\_\_\_.

\_\_\_\_\_  
*Judge.*

Schedule 1.

Column 1.	Column 2.	Column 3.
Names of persons liable to have been assessed on the Assessment Roll for the Municipality of _____ for the year 18____, but not assessed.	Amount for which the parties should have been assessed.	Property in respect to which the liability to assessment exists.

## Schedule 2.

Column 1.	Column 2.	Column 3.
Names of persons not sufficiently assessed on the Assessment Roll for the Municipality of for the year 18 .	Amount for which the parties should be assessed in addition to the amount already on the Assessment Roll.	Property in respect to which the liability to assessment exists.

## FORM 21.

(Section 24).

## APPLICATION TO JUDGE AGAINST DELINQUENT CLERK.

Pursuant to the twenty-fourth section of "*The Voters' Lists Act*," I, A. B., Clerk of the Peace for the County of , (or, "a person entitled to be named as an elector on the Voters' List for the Municipality of , for 18 ,") hereby inform His Honour the Judge of the County Court of the said County, that C. D., Clerk of the Municipality of , in the said County, has failed to perform the duties required of him as such Clerk by the said Act, in this, that he the said C. D. has not made out the Alphabetical List of Voters for 18 , for the said Municipality, within thirty days after the final revision and correction of the Assessment Roll thereof (or, "has not delivered or transmitted printed copies of the Voters' List for the said Municipality, for 18 , to and and or to any of them" or, *as the case may be, stating in brief the duty not performed*), according to the requirements of the said Act; and I apply to you the said Judge to enforce the performance of the duties aforesaid, and to take such other proceedings as may be necessary.

Dated at , this day of 18 .  
A. B.,  
Clerk of the Peace.

## FORM 22.

(Section 24, Sub-sec. 3.)

## SUMMONS.

"*The Voters' Lists Act*."

In the matter of the Voters' List for the Municipality of , in the County of , for 18 .

Whereas it appears by the application of A. B., the Clerk of the Peace for the said County (or, "a person entitled to be named as an elector on the said List"), made to me, in pursuance of the said Act, that you, C. D., the Clerk of the said Municipality, have failed to perform certain duties required of you by the said Act, in this, that you have not made out the Alphabetical List of Voters for 18 , for the said Municipality, within

thirty days after the final revision and correction of the Assessment Roll thereof (*or, as the case may be, following the application*); and whereas the said A. B. has applied to me to enforce the performance of the duties aforesaid;

You, the said C. D., are therefore hereby required to be and appear before me at my Chambers, in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at the hour of \_\_\_\_\_, and then and there have with you and produce before me the Assessment Roll for 18\_\_\_\_, for the said Municipality, and any documents in your custody, power or control, relating to the Assessment Roll, or to the Voters' List aforesaid; and then and there submit yourself for the examination on oath as may be required of you. Herein fail not at your peril.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

To C. D.,  
Clerk of the Municipality of \_\_\_\_\_

\_\_\_\_\_  
Judge.

## CHAPTER 10.

### An Act respecting Elections of Members of the Legislative Assembly.

Short title, s. 1.	Endorsement of date of receipt of writ, s. 31.
Interpretation, s. 2.	Proclamation of Nomination Day, ss. 32-38.
"Owner."	Preparation of polling places, ss. 39-40.
"Occupant."	Procuring ballot-boxes, s. 41.
"Tenant."	Oath to be taken by Returning Officer, s. 42.
"Election."	Appointment of Election Clerk, ss. 43-47.
"To vote."	Proceedings on Nomination Day, ss. 48-52.
"Electoral District."	Withdrawal of candidates after nomination, ss. 53, 54.
"Voters' List."	Proceedings when a poll is granted, ss. 55-58.
"Corrupt Practices."	Proceedings preliminary to the poll, ss. 59-88.
Qualification of members, s. 3.	Appointment of Deputy Returning Officers, ss. 59-63.
Qualification of voters, ss. 4-10.	Procuring ballot papers, 64-66.
Persons disqualified, 4-6.	"    ballot boxes, ss. 67-68.
Persons who may vote, s. 7.	"    direction to voters, 69, 70.
In respect of real property.	"    certificate of date of return and final revision of assessment roll, s. 71.
In respect of income.	
Farmers' sons.	
Indians.	
In Algoma.	
Lists of defaulters in payment of income tax, ss. 8-10.	
Polling sub-divisions, ss. 11-17.	
Returning Officers, ss. 18-25.	
General elections, time of polling, &c., ss. 26-29.	
PROCEEDINGS AT ELECTIONS.	
Issue of writ, s. 30.	
Proceedings of Returning Officer on receipt of writ, ss. 31-47	

- Procuring lists of voters, ss. 72-80.  
 Appointment of Poll Clerks, ss. 81-85.  
 Where voters are to vote, ss. 86-88.  
 Proceedings at the poll, ss. 89-104.  
 Proceedings after the close of the poll, ss. 105-116.  
 Counting of votes by Deputy Returning Officer, ss. 105-108.  
 Return of documents to the Returning Officer, ss. 109-114.  
 Delivery of ballot boxes to the Clerk of the Municipality, s. 115.  
 Counting of votes by Returning Officer, s. 116.  
 Re-count of ballots by County Judge, ss. 117-122.  
 Proceedings in case of loss of voters' list, &c., ss. 123, 124.  
 Return and preservation of documents relating to the election, ss. 125-128.  
 Failure of Returning Officers to return, s. 129.  
 Publication of return, ss. 130.  
 INSPECTION OF DOCUMENTS RELATING TO ELECTIONS, ss. 131-134.  
 PROVISIONS FOR KEEPING PEACE AND GOOD ORDER AT ELECTIONS.  
 Powers of Returning and Deputy Returning Officers, ss. 135-141.  
 Carrying arms within two miles of election prohibited, s. 142.  
 Party ensigns and badges prohibited, ss. 143-145.  
 MAINTAINING SECRECY OF PROCEEDINGS, ss. 146-148.  
 PREVENTION AND PUNISHMENT OF CORRUPT PRACTICES, &C.  
 Corrupt practices—  
 Bribery, ss. 149, 150.  
 Providing refreshment, ss. 151-153.  
 Hiring vehicles, s. 154.  
 Undue influence, s. 155.  
 Personation, s. 156.  
 Selling liquor on polling day, s. 157.  
 Punishment of corrupt practices—  
 Corrupt practices by candidate or agent, when to avoid an election, ss. 158-160.  
 Corrupt practices by candidate, when to subject to penalties and disqualification, ss. 161, 162.  
 Corrupt practice by voter to avoid his vote, s. 163.  
 Corrupt practices by persons other than candidates, s. 164.  
 Employment of agents previously found guilty of corrupt practices, to avoid an election, s. 165.  
 Where a second election held, effect of the avoidance of a former election, s. 166.  
 Removal of disqualifications on proof that obtained by perjury, s. 167.  
 Penalties for other illegal acts—  
 Voting when disqualified, s. 168.  
 Voting more than once, s. 169.  
 Colourable transfer of property to confer a vote, s. 170.  
 Voting on property fraudulently transferred, s. 171.  
 Executory contracts arising out of elections, s. 172.  
 When no statutory penalty to be recovered, s. 173.  
 Court for trial of illegal acts, ss. 174, 175.  
 Persons not to be excused from giving evidence on ground of self crimination, s. 176.  
 OFFENCES AND PENALTIES.  
 Falsifying lists, &c., s. 177.  
 In relation to ballot papers, s. 178.  
 Injury or destruction of documents relating to the election, s. 179.  
 Neglect of Deputy Returning Officer or Poll Clerk, s. 180.  
 Forfeiture to persons aggrieved by wilful omissions, s. 181.  
 Recovery of penalties, s. 182.  
 ELECTION EXPENSES OF CANDIDATES.  
 Agents to be appointed through whom payments to be made, ss. 183-185.  
 Statement of expenses to be sent to Returning Officer, and published by him, s. 186.  
 Vouchers to be kept, s. 187.  
 FEES FOR RETURNING OFFICERS, &C., ss. 188-190.  
 MISCELLANEOUS —  
 Property in ballot boxes, s. 191.  
 Respecting agents, ss. 192-195.  
 Non-judicial days, s. 196.  
 Elections not to be void for non-compliance with matters of form, s. 197.  
 What to be deemed a tender of a vote, s. 198.  
 Administration of oaths, s. 199.  
 Oaths, &c., to be administered gratuitously, s. 200.  
 Copies of Act to be transmitted to Returning Officers, s. 201.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as "*The Election Act*," or "*The Election Act of Ontario*." Short title.

#### INTERPRETATION.

2. Wherever the following words and expressions occur in any part of this Act, they shall be interpreted as follows, unless there is something in the context repugnant to such construction :— Interpretation clause.

(1) "Owner" shall signify proprietor, either in his own right or in the right of his wife, of an estate for life or any greater estate, either legal or equitable, except in the provisions of this Act relating to the qualification of farmers' sons to vote, where the proprietor is a widow, and in such case the word "owner" shall signify proprietor in her own right of any such estate ; "Owner."

(2) "Occupant" shall signify a person *bona fide* occupying property, otherwise than as owner or tenant, either in his own right, or in the right of his wife, but being in possession of such property and enjoying the revenues and profits arising therefrom to his own use ; "Occupant."

(3) "Tenant" shall include any person who, instead of paying rent in money, is bound to render to the owner any portion of the produce of such property ; "Tenant."

(4) "Farm" shall mean land actually occupied by the owner thereof, and not less in quantity than twenty acres ; "Farm."

(5) "Son" or "Sons" or "Farmers' Son," shall mean any male person or persons not otherwise qualified to vote, and being the son or sons of an owner and actual occupant of a farm ; "Son," "Farmer's Son."

(6) "Father" shall include step-father ; "Father."

(7) "Election" shall mean an election of a member to serve in the Legislative Assembly ; "Election."

(8) "To vote" shall mean to vote at the election of a member of the Legislative Assembly ; "To vote."

(9) "Electoral District" shall mean any County, or other place or portion of this Province, entitled to return a member to the Legislative Assembly ; "Electoral District."

(10) "Voters' List" shall mean the copy of the voters' list furnished in accordance with section fifty-six of this Act ; "Voters' List."

(11) "Corrupt practices," or "Corrupt practice," shall mean bribery, treating and undue influence, or any of such offences, "Corrupt practices" and



"Corrupt  
practice."  
Furnishing  
entertain-  
ment.  
Hiring  
vehicles.  
Personation.  
Selling Liquor.

as defined by this or any Act of the Legislature, or recognized by the Common Law of the Parliament of England; also any violation of the one hundred and fifty-first, one hundred and fifty-fourth, or one hundred and fifty-sixth sections of this Act; and any violation of the one hundred and fifty-seventh section of this Act during the hours appointed for polling. 32 V. c. 21, ss. 6 & 81; 36 V. c. 2, s. 1; 37 V. c. 5, s. 39 (8); 40 V. c. 9, s. 1.

#### QUALIFICATION OF MEMBERS.

No property  
qualification  
for members.

**3.** No qualification in real estate shall be required of any candidate for a seat in the Legislative Assembly. 33 V. c. 4, s. 2.

#### QUALIFICATION OF VOTERS.

##### *Who shall not Vote.*

Persons dis-  
qualified from  
voting.

**4.** The Chief Justice and the Justices of the Court of Appeal, the Chancellor and Vice-Chancellors of Ontario, the Chief Justices and Judges of the Courts of Queen's Bench and Common Pleas in Ontario, all County Judges, all Officers of the Customs of the Dominion of Canada, all Clerks of the Peace, County Attorneys, Registrars, Sheriffs, Deputy Sheriffs, Deputy Clerks of the Crown, and Agents for the sale of Crown Lands, all Postmasters in Cities and Towns, and all Officers employed in the collection of any duties payable to Her Majesty in the nature of duties of excise, shall be disqualified and incompetent to vote at any election; and if any public officer or person mentioned in this section votes at any such election, he shall thereby forfeit the sum of two thousand dollars, and his vote at such election shall be null and void. 32 V. c. 21, s. 2; 39 V. c. 10, s. 48.

Penalty.

Certain officers  
and persons  
not to vote.

**5.** No Returning Officer or Election Clerk, and no person who, at any time, either during the election or before the election, is or has been employed at the said election or in reference thereto, or for the purpose of forwarding the same, by any candidate or by any person whomsoever, as counsel, agent, attorney or clerk, at any polling place at any such election, or in any other capacity whatever, and who has received or expects to receive, either before, during or after the said election, from any candidate or from any person whomsoever, for acting in any such capacity as aforesaid, any sum of money, fee, office, place of employment, or any promise, pledge or security whatever therefor, shall be entitled to vote at any election. 32 V. c. 21, s. 3; 38 V. c. 3, s. 27.

2. The preceding provision shall not apply to Deputy-Returning Officers and Poll Clerks appointed under this Act and receiving as such the fees to which such officers are entitled under this Act. 38 V. c. 3, s. 27.

6. No woman shall be entitled to vote at any election. 32 V. c. 21, s. 4. No woman to vote.

*Who may Vote.*

7. The following persons, and no others, being of the full age of twenty-one years, and subjects of Her Majesty by birth or naturalization, and not being disqualified under the preceding sections, or otherwise by law prevented from voting, shall, if duly entered on the list of voters proper to be used at the election then pending, according to the provisions of "*The Voters' Lists Act*," or of this Act, be entitled to vote at elections of members to serve in the Legislative Assembly of this Province, that is to say :— Who may vote at elections. Rev. Stat. s. 9.

*Firstly.* Every male person entered on the revised assessment roll, upon which the voters' list to be used at the election is based for any City, Town, Incorporated Village or Township, for real property of the value hereinafter mentioned and being, at the time of the election, either the actual *bona fide* owner, tenant or occupant of such real property, or, in case he has ceased to be such owner, tenant or occupant, a resident of the Electoral District. *See* 32 V. c. 21, s. 5 (1), *and Form O.* Real property qualification.

2. Such person must (subject to the provisions hereinafter contained) have been rated on such assessment roll as the owner, tenant or occupant of real property of the actual value of not less than the following :— Value of real property necessary

In Cities, four hundred dollars ;

In Towns, three hundred dollars ;

In Incorporated Villages, two hundred dollars ;

In Townships, two hundred dollars. *See* 32 V. c. 21, s. 5 (1).

3. When any real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if equally divided between them, to give a qualification to each, then each of them shall be deemed rated within this Act ; otherwise none of them shall be deemed so rated. 31 V. c. 21, s. 5 (2). Joint owners.

*Secondly.* Subject to the provisions hereinafter contained, every male person who is residing at the time of the election in the local Municipality in which he tenders his vote, and has resided therein continuously since the completion of the last revised assessment roll of the Municipality, and derives an income from some trade, calling, office or profession of not less than four hundred dollars annually, and has been assessed for such income in and by the assessment roll of the Municipality, upon which the voters' list used at the election is based. 37 V. c. 3, s. 1. Income franchise.

2. In case the voters' list to be used at an election is that of a year preceding the year in which the writ of election bears date, the right of voting at an election in respect of income Persons to be entitled to vote on income must have paid

taxes thereon  
for preceding  
year.

shall belong to those only on the said list who had paid the municipal tax on such income for such preceding year on or before the thirty-first day of December next before the election. 39 V. c. 10, s. 5.

Where list to  
be used is the  
list prepared  
that year,  
taxes to be  
paid before  
date of writ.

3. In case the voters' list to be used at an election is that of the year in which the writ of election bears date, and the Collector's roll for the same year has been in the Collector's hands for at least one month before the date of the writ of election, the right of voting in respect of income shall belong to those only who had, before the date of the writ, paid the municipal tax on such income for the said year. 39 V. c. 10, s. 6.

Farmers' sons.

*Thirdly.* Every farmer's son who is resident at the time of the election in the Electoral District in which he tenders his vote and has resided therein, on the farm of his father or mother for twelve months next prior to the return by the Assessors of the assessment roll on which the voters' list used at the election is based, and who has been duly rated on the assessment roll for such farm at an amount sufficient to give a qualification to vote at the election. 40 V. c. 9, s. 3.

2. If there are more sons than one so resident, and if the farm is not rated and assessed at an amount sufficient, if equally divided between them, to give a qualification to vote to the father and all the sons, where the father is living, or to the sons alone where the father is dead and the mother is a widow, then the right to vote under this Act shall belong to and be the right only of the father and such of the eldest or elder of said sons to whom the amount at which the farm is rated and assessed will, when equally divided between them, give the qualification to vote; and if the amount at which the farm is so rated and assessed is insufficient, if equally divided between the father (if living) and one son, to give to each a qualification to vote, then the father shall be the only person entitled to vote in respect of such farm. 40 V. c. 9, s. 2.

3. Occasional or temporary absence from the farm for a time or times not exceeding in the whole four months of the twelve hereinbefore mentioned, shall not operate to disentitle a farmer's son to vote under this Act. 40 V. c. 9, s. 3, *last clause*.

Indians.

*Fourthly.* All Indians or persons with part Indian blood who have been duly enfranchised, and all Indians or persons with part Indian blood who do not reside among Indians, though they participate in the annuities, interest-moneys and rents of a tribe, band or body of Indians, subject to the same qualifications in other respects, and to the same provisions and restrictions, as other persons in the Electoral District. 39 V. c. 10, s. 4. *See* 38 V. c. 3. s. 15.

In Algoma,  
&c.

*Fifthly.* In such of the Municipalities, Townships, and places in the Electoral Districts mentioned in the seventy-eighth

section of this Act, as have no assessment roll, and in all parts of the Electoral District of Algoma, every male person of the full age of twenty-one years, being a subject of Her Majesty by birth or naturalization, and not otherwise disqualified, who is at the time of the election actually and *bona fide* the owner of real estate, in the Electoral District for which he claims to vote, of the value of two hundred dollars or upwards, or who is at the time of the election a resident householder of such place, and has been such owner or householder for the six months next preceding the election. 38 V. c. 3, s. 23.

*Lists of Defaulters in Payment of Income Tax.*

8. Where a writ of election is issued, if the Collector's roll has been returned to the Treasurer of the Municipality, the Treasurer shall forthwith prepare, and if the roll has not been so returned the Collector shall forthwith prepare, and the Treasurer or Collector (as the case may be) shall verify on oath, a list of the persons, being on the voters' list by reason of their income only, who were in default for not having paid the municipal tax on such income on the thirty-first day of December (or before the date of the writ, as the case applicable to the election about to be held may be); and the respective officers of Municipalities shall afford such information, assistance, and facility to one another for preparing, revising, and completing the defaulters' list, as may be required. 39 V. c. 10, s. 7.

Treasurer or  
Collector to  
prepare list of  
defaulters.

9. The defaulters' list shall be verified by an affidavit which may be in the following form:—

Defaulters' list  
to be verified.

"I, \_\_\_\_\_ of \_\_\_\_\_, Treasurer (or Collector) for the Municipality of \_\_\_\_\_ make oath and say that the persons named in the annexed list had not on the thirty-first day of December last (or had not before the \_\_\_\_\_ day of \_\_\_\_\_ last, as the case may be), paid the municipal tax assessed and payable by them in respect of their income; and I further say that the said list contains the names of all persons on the voters' list in respect of income who had not paid their municipal tax thereon on the said thirty-first day of December (or before the said \_\_\_\_\_ day of \_\_\_\_\_, as the case may be)."1

Form of affidavit.

39 V. c. 10, s. 8.

10. The person preparing the said defaulters' list shall furnish certified copies of the said list and affidavit in the same manner and for the same compensation as copies of the voters' lists are to be furnished; and the defaulters' list, furnished and verified by the Treasurer or Collector as aforesaid, shall be the evidence on which the Deputy Returning Officer shall act in ascertaining the payment or non-payment of taxes by persons entitled to vote in respect of income, but the admission or rejection of voters by the Deputy Returning Officer shall be without prejudice to the right of the voter to mark a tendered ballot paper, and without prejudice to what may be afterwards shewn on an election petition. 39 V. c. 10, s. 9.

Certified  
copies of de-  
faulters' list  
be furnished



## SUBDIVISIONS FOR POLLING PLACES.

Cities, etc., to be divided into polling subdivisions,

**11.** Every City, Town, Ward, Township or incorporated Village, having more than two hundred qualified voters therein shall be divided by well-defined boundaries, such as streets, side lines, concession lines or the like, in the most convenient manner into polling subdivisions by by-law of the Municipal Council having jurisdiction over the locality, and in such manner that the number of qualified electors in the several polling subdivisions shall be as nearly equal as may be, and shall not in any one exceed two hundred. 32 V. c. 21, s. 25; 33 V. c. 4, s. 1.

Polling subdivisions to be same as for municipal elections,

**2.** Where a Municipality is divided into polling sub-divisions, the same polling sub-divisions shall be used both for the election of members of the Legislative Assembly and for municipal elections; and the polling sub-divisions for elections to the Legislative Assembly and municipal elections, shall hereafter be made the same in all cases, except that the Municipal Council of every City, Town, or incorporated Village, may by by-law unite, for the purposes of municipal elections, any two adjoining polling sub-divisions. 40 V. c. 12, ss. 2, 3. *See Rev. Stat. c. 174, s. 461 (1).*

and again divided when necessary.

**12.** Whenever the number of qualified voters in any such polling subdivision increases so as to exceed two hundred, or whenever the Municipal Council consider that the convenience of the electors would be promoted by a new and different subdivision, such City, Town, Ward, Township or incorporated Village, shall be again in like manner divided into polling subdivisions so as to conform to the intent and meaning of this Act, and so again, from time to time, as like occasion shall require. 32 V. c. 21, s. 26 (1); 33 V. c. 4, s. 1.

Subdivision to be based on assessment.

**13.** Every division made under the two next preceding sections shall be based upon the then last revised and corrected assessment roll of the City, Town, Ward, Township, or incorporated Village. 32 V. c. 21, s. 26 (1); 33 V. c. 4, s. 1.

Appeal.

**14.** At any time within two months after the filing of such by-law, an appeal shall lie from any such subdivision, at the instance of any five of the electors, to the Judge of the County Court, who shall promptly correct such subdivision so as to conform to the true intent and meaning of this Act. 32 V. c. 21, s. 26 (1).

Subdivisions to be numbered.

**15.** The said subdivisions shall be numbered consecutively in and by the by-law by which they are established, and a copy of such by-law, certified under the seal of the corporation to be a true and correct copy, and signed by the Head or Clerk of the Municipality, shall be forthwith, after the making thereof, transmitted to and filed in the office of the Clerk of the



Peace of the County or Union of Counties within which such Municipality is situate. 32 V. c. 21, s. 26 (2).

**16.** In case of failure on the part of any Municipal Council to divide any City, Town or other local Municipality into polling subdivisions proportioned to the number of electors, as hereinbefore provided, or in case the time to appeal from the division should not have expired before the receipt of the writ, the Returning Officer shall provide as many polling places for polling the votes of the electors in such City, Town or other local Municipality, as shall correspond, as nearly as may be, with the number of polling places which would have been required if the said City, Town or other local Municipality had been subdivided into the proper number of polling subdivisions. 32 V. c. 21, s. 26 (3).

Duty of Returning Officer in case polling subdivisions have not been established.

**17.** In case it is necessary for any Returning Officer to divide any Municipality or any part thereof into polling subdivisions, he shall be paid by the Treasurer of the Municipality a reasonable allowance therefor. 38 V. c. 3, s. 13.

Remuneration to Returning Officer for dividing into polling subdivisions.

#### RETURNING OFFICERS.

**18.** Every writ for the election of a member of the Legislative Assembly shall be addressed to the Sheriff, or to the Registrar of deeds, or to one of the Sheriffs, or one of the Registrars of deeds, for the Electoral District, or some portion of the Electoral District, for which the election is to take place, and he shall be the Returning Officer at such election.

Returning Officer to be Sheriff or a Registrar.

**2.** Not more than one writ of election shall be addressed to the same Returning Officer at one time. 39 V. c. 10, s. 11 (1).

**19.** In case there is no Sheriff or Registrar to whom a writ of election for an Electoral District can be addressed, the writ shall be addressed to such other person as the Lieutenant-Governor may appoint to be Returning Officer. 39 V. c. 10, s. 11 (2).

In case no Sheriff or Registrar.

**20.** In case the person to whom the writ should under the foregoing provisions be addressed, or to whom the writ has been addressed, should refuse to act, or should be absent, or should be incapacitated or unable from sickness or any other cause to act as Returning Officer, the Lieutenant-Governor may appoint some other person as Returning Officer. 39 V. c. 10, s. 11 (3).

In case of refusal or incapacity to act.

**21.** In case a writ has been issued to a person whose appointment is subsequently superseded, a new writ may be issued; or the new Returning Officer may act under the writ already issued, as if the same had been addressed to him; and if valid proceedings have been had under the first appointment, the validity of such proceedings shall not be affected by the new

Case of writ being directed to a person whose appointment is subsequently superseded.

appointment; but the new Returning Officer may appoint a new Election Clerk and new Deputy Returning Officers, if he thinks fit, notwithstanding valid appointments to such offices had already been made by the person previously named as Returning Officer. 39 V. c. 10, s. 11 (4).

Qualification  
of any person  
so appointed.

**22.** No person, other than a Sheriff or Registrar aforesaid, shall be so appointed, or act as Returning Officer for any Electoral District in this Province, unless at the time of his appointment, such person is an elector for such Electoral District, then duly and legally qualified to vote at the election of a member for the same, nor unless he has continually resided therein during at least twelve months immediately preceding his appointment; and any person who, being so appointed, acts as Returning Officer for any Electoral District, without possessing the qualifications hereinbefore required, shall thereby incur a penalty of two hundred dollars. 32 V. c. 21, s. 14.

Penalty.

Persons ex-  
cluded from  
being Return-  
ing Officers.

**23.** None of the persons hereinafter designated in this section, shall, in any case, be appointed or act as Returning Officer, or as Deputy Returning Officer, or as Election Clerk, or as Poll Clerk, that is to say:—

(a) The Members of the Executive Council.

(b) The Members of the Parliament of the Dominion of Canada or of the Legislative Assembly of this Province;

(c) Any Minister, Priest or Ecclesiastic, under any form or profession of religious faith or worship; 32 V. c. 21, s. 15.

(d) Every Judge of a Court having general jurisdiction throughout Ontario, or having local jurisdiction throughout any County or other territorial division; 40 V. c. 7, *Sched. A* (2).

(e) All persons who have served in the Legislature of this Province as members of the Legislative Assembly, in the Session next immediately preceding the election in question, or in the then present Session, if the election takes place during a Session of the said Legislative Assembly. 32 V. c. 21, s. 15.

Penalty.

2. If any one of the persons above mentioned in this section is appointed to act and acts as Returning Officer, or as Deputy Returning Officer, or as Election Clerk, or as Poll Clerk, he shall thereby incur a penalty of two hundred dollars. 32 V. c. 21, s. 15 (2); 39 V. c. 10, s. 48.

Exempted  
persons.

**24.** None of the persons hereinafter mentioned in this section, unless they are Sheriffs or Registrars, or Town Clerks or Assessors, shall be obliged to act as Returning Officer or Dep-

uty Returning Officer, or as Election Clerk or Poll Clerk, that is to say :—

(a) Physicians and Surgeons ;

(b) Millers ;

(c) Postmasters ;

(d) Persons being sixty years of age or upwards ;

(e) Persons who have previously served as Returning Officers. 32 V. c. 21, s. 16.

**25.** Every Sheriff or Registrar, and every other person having the qualifications required by this Act for acting as Returning Officer, who refuses to perform the duty of Returning Officer at any such election as aforesaid, after having received the writ of election, shall, for such refusal, incur a penalty of two hundred dollars ; unless such person, not being a Sheriff or Registrar, and having a right to claim the exemption granted by the next preceding section, has in fact claimed such exemption by letter to the Clerk of the Crown in Chancery, forwarded within two days next after the receipt of such writ of election, setting forth the grounds of such exemption. 32 V. c. 21, s. 17.

Penalty for refusal to act as R. O.

#### GENERAL ELECTIONS.

**26.** Whenever a new Legislative Assembly is called, and a general election is to be held for that purpose, the Lieutenant-Governor in Council shall fix the day for holding such elections, and shall also fix the day on which the polling shall take place, in cases where a poll is demanded and granted. 32 V. c. 21, s. 18.

Lieut.-Gov-ernor to fix days of election and polling in case of a general election.

**27.** The day so to be fixed as aforesaid for holding the said elections shall not be more than twenty days nor less than sixteen days from the date of the writs of election ; and the day for holding the polls shall not be more than eight, nor less than six days after the day for holding the said elections. 32 V. c. 21, s. 18 (3).

Time for holding elections and for polling.

**28.** At every general election, the elections for all Electoral Districts, throughout the Province, shall take place and be held on one and the same day, and the polling at all such elections where polls have been demanded and granted, shall also take place on one and the same day ; and the respective days so fixed for holding such elections, and for opening and holding the polls, shall be stated and inserted in the proclamation calling such general election, and in the several writs of election in that behalf. 32 V. c. 21, s. 18 (2).

All general elections on same day.

Polling on same day.

Teste and  
return.

**29.** There shall be forty days between the teste and the return of every writ of election. 32 V. c. 21, s. 18 (4).

## PROCEEDINGS AT ELECTIONS.

### ISSUE OF THE WRIT.

Writs to be ad-  
dressed to Re-  
turning  
Officers.

**30.** Whenever a writ of election is issued for the election of a member to serve in the Legislative Assembly of this Province, the same shall be addressed and directed to the Sheriff or Registrar, who is *ex officio* the Returning Officer for the Electoral District, or to the person appointed by the Lieutenant-Governor, if such appointment is made according to the requirements of this Act. 32 V. c. 21, s. 19.

Writs for Dis-  
tricts of Algo-  
ma, and Mus-  
koka and  
Parry Sound.

**2.** The Lieutenant-Governor may cause the writs for the Electoral Districts of Algoma, and of Muskoka and Parry Sound, respectively, to be directed to the Sheriff of Algoma, or to the Registrar of Muskoka, or of Parry Sound, or to such other Returning Officer as he thinks fit. 38 V. c. 3, s. 25.

### PROCEEDINGS ON THE RECEIPT OF THE WRIT.

Endorsement  
on writ.

**31.** Each Returning Officer shall, on receiving the writ of election, forthwith endorse thereon the date of its receipt. 32 V. c. 21, s. 20.

### *Proclamation of Nomination Day.*

Proclamation.

**32.** He shall, by a proclamation under his hand in the English language, in the words or to the effect of Form I, in Schedule A, to this Act, declare the place, day and hour at which the election will be held, and shall cause the said proclamation to be posted up in the manner hereinafter prescribed, with all reasonable speed after the receipt of the writ and at least eight days before the day fixed for holding the said election, which day so fixed shall be called the Nomination Day. 32 V. c. 21, s. 20 (2) & (3); 39 V. c. 10, s. 14.

Posting up of  
proclamation.

How the eight  
days' notice  
reckoned.

**2.** Neither the day of nomination nor that of the posting up of such proclamation, shall be included in the said eight days. 32 V. c. 21, s. 20 (8).

Place of  
election.

**33.** The place at which such election will be held, shall be fixed by the Returning Officer, and shall be in the public place most central and most convenient for the great body of the electors in the Electoral District for which he is acting as Returning Officer, and the hour to be fixed shall be between eleven o'clock in the forenoon and two o'clock in the afternoon of the day so fixed for opening the election. 32 V. c. 21, s. 20 (4).

Hour.



**34.** In and by the proclamation aforesaid, the Returning Officer shall also declare the day on which, in case a poll be demanded and granted, as hereinafter provided, such poll shall be opened, in conformity with this Act, in each City, Township, or Union of Townships, or Ward, or part of Township or Ward (as the case may be), for taking and recording the votes of the electors according to law. 32 V. c. 21, s. 20 (5)

**35.** If the election is for a City or Town, the Returning Officer shall cause the said proclamation to be posted up at the City or Town Hall, and in some public place in each Ward of such City or Town. 32 V. c. 21, s. 20 (6).

**36.** If the election is for a County or Riding, he shall cause the said proclamation to be posted up at the Town Hall or other public place where the meetings of the Municipal Council of each Township are held, at every post office in the Electoral District, and at least at one public place in every polling subdivision. 32 V. c. 21, s. 20 (7).

**37.** Any Returning Officer refusing or neglecting to cause such proclamation to be posted up as above required, shall, for such neglect or refusal, incur a penalty of two hundred dollars. 32 V. c. 21, s. 20 (9).

**38.** The nomination in the Electoral District of Algoma shall not take place less than fifteen days nor more than twenty days after the proclamation was posted up; and the day for holding the polls shall be the fourteenth day next after the day fixed for the nomination of candidates; that is, on the corresponding day of the week next but one after that on which the nomination has taken place; or if such fourteenth day be a statutory holiday, then on the following day not being a statutory holiday. The nomination or polling may be held in any year at some time from the twentieth day of May to the end of November, and between those days only. 39 V. c. 10, s. 13.

### *Polling Places.*

**39.** The Returning Officer shall also, on receiving the writ of election, fix one polling place for each subdivision into which such City, Town or other local Municipality is subdivided, in the most central and convenient place for the electors of such subdivision: but the number of polling places now required by law in Cities and Towns, shall in no case be diminished, and the polling places shall be at least one hundred yards distant from each other in Cities, Towns and incorporated Villages, and at least one mile distant from each other in other local Municipalities. 32 V. c. 21, s. 28; 38 V. c. 3, s. 14.

2. A Returning Officer may in his discretion grant such additional polling places in any polling subdivision as the extent

Polling day.

Place of posting up proclamation in cities, &c.

In Counties, &c.

Penalty.

Nomination and polling days in Algoma.

Polling places in each polling subdivision.

Number of polling places in discretion



of Returning  
Officer.

of the subdivision and the remoteness of any body of its voters from the polling place render necessary. 39 V. c. 10, s. 16.

Polling place  
not to be a  
tavern.

3. The building in which the poll is held shall not be a tavern or place of public entertainment; and there shall be free access to the poll for every elector. 32 V. c. 21, s. 28.

In cities, un-  
less the Coun-  
cil provide  
proper polling  
places, the Re-  
turning Officer  
shall.

4. In Cities, unless the Municipal Council provides suitable polling places at its own expense, the Returning Officers shall provide the same; and the expense thereof, not exceeding eight dollars for each polling place, shall be paid by the Treasurer of the City, upon the order of the Returning Officer. 38 V. c. 3, s. 26.

Compartment  
wherein voters  
may mark  
votes.

40. Every polling place shall be furnished with compartments in which the voters can mark their votes screened from observation; and it shall be the duty of the Returning Officer and the Deputy Returning Officer respectively, to see that a sufficient number of such compartments is provided at each polling place. 37 V. c. 5, s. 5.

#### *Ballot Boxes.*

Ballot boxes to  
be furnished.

41. The Returning Officer shall also, on receiving the writ of election, procure or cause to be procured as many boxes (hereinafter called ballot boxes) as there are polling subdivisions within the Electoral District. 37 V. c. 5, s. 2 (1).

How made.

2. The ballot boxes shall be made of some durable material, shall be provided with a lock and key, and shall be so constructed that the ballot paper can be introduced therein, and cannot be withdrawn therefrom unless the box be unlocked. 37 V. c. 5, s. 2 (2).

Penalty on  
failure to  
furnish boxes.

3. If the Returning Officer fails to furnish ballot boxes in the manner herein provided, he shall incur a penalty of one hundred dollars in respect of every ballot box which he has failed to furnish in the manner prescribed. 37 V. c. 5, s. 2 (5).

#### *Oath of Returning Officer.*

Oath of Re-  
turning Officer.

42. Each Returning Officer shall, before the day fixed for opening the election, take and subscribe before a Justice of the Peace for the County or District in which he resides the oath Form 2 in Schedule A. to this Act; and such Justice of the Peace shall (under a penalty of forty dollars, in case of refusal) deliver to him, under the hand of such Justice, and in the words or to the effect of Form 3 in Schedule A., a certificate of his having taken the said oath, which, together with the said certificate, shall be annexed to his return to the writ of election; and any Returning Officer who refuses or neglects either to take and subscribe the said oath, or to annex it with the said

Certificate  
thereof.

Penalty.

certificate to his return, shall, for such refusal or neglect, incur a penalty of forty dollars. 32 V. c. 21, s. 21.

*Election Clerks.*

**43.** Each Returning Officer shall, before the nomination day, appoint, by a commission under his hand, in the words or to the effect of Form 4 in Schedule A. to this Act, a fit person to be his Election Clerk, and to assist him in the performance of his duties as Returning Officer. 32 V. c. 21, s. 22.

**44.** Such Election Clerk shall take and subscribe, either before a Justice of the Peace for the County or District in which he resides or before the said Returning Officer, the oath Form 5 in Schedule A. to this Act, and a certificate of his having taken such oath shall be delivered to him, by the person before whom he has been sworn, and under the hand of such person, in the words or to the effect of Form 6 in said Schedule A. 32 V. c. 21, s. 22 (2).

**45.** Any person so appointed as Election Clerk, who refuses to accept the said office, or who, having accepted it, refuses or neglects to take and subscribe the said oath, or to perform the duties of Election Clerk, shall, for such refusal or neglect, incur a penalty of forty dollars. 32 V. c. 21, s. 22 (3).

**46.** The Returning Officer may, either before or after the nomination day, appoint, in the manner above mentioned, another person as his Election Clerk, whensoever the case requires, either by reason of the death, illness or absence of any Election Clerk previously appointed, or of his refusal or neglect to act, or otherwise; and such new Election Clerk so appointed shall perform all the duties and comply with all the obligations of his office, under the same penalty, in case of refusal or neglect on his part, as is hereinbefore imposed in like cases. 32 V. c. 21, s. 22 (4).

**47.** Whenever any Returning Officer becomes unable to perform the duties of his office, whether by death, illness, absence or otherwise, the Election Clerk so by him appointed as aforesaid, shall under the same penalties in case of refusal or neglect on his part as are hereinbefore imposed in like cases on the Returning Officer, act as, and shall be Returning Officer for the said election, and shall perform all the duties and obligations of that office, in like manner as if he had been duly appointed Returning Officer, and without being required to possess any other qualification, or to take any new oath for that purpose; and, in any such case, the Election Clerk shall annex to his return to the writ of election the said certificate of the oath he has taken as Election Clerk, and also the oath itself. 32 V. c. 21, s. 22 (5).

## PROCEEDINGS ON THE NOMINATION DAY.

Proceedings of the Returning Officer on the day of nomination.

**48.** Every Returning Officer shall, at the time and place fixed as aforesaid for opening the election, proceed to the hustings (which shall be held at such a place that all the electors may have free access thereto), and shall make or cause to be made, in the English language, in the presence of the electors there assembled, a proclamation in the words or to the effect of Form 7 in Schedule A. to this Act, and shall then and there read, or cause to be read publicly, in the English language, the writ of election, and his commission as Returning Officer when he has been appointed Returning Officer by special commission for such purpose, and shall then require the electors there present to name the person or persons whom they wish to choose at the said election to represent them in the said Legislative Assembly, in obedience to the said writ of election. 32 V. c. 2, s. 23 (1); 38 V. c. 3, s. 14.

No show of hands to be taken; poll to be granted, demanded.

**49.** No show of hands shall be taken on the nomination day, but if at the nomination more than one candidate is proposed, and a poll is then and there demanded by or on behalf of any one or more of such candidates, the Returning Officer shall grant a poll for taking and recording the votes of the electors. 32 V. c. 21, s. 23 (2).

Penalty on R. O. for refusal to grant poll.

**50.** Any elector present, or any candidate in person, or by his agent, may demand a poll, and when at any such election a poll is demanded, if the Returning Officer neglects or refuses to grant the same, the election shall be *ipso facto* null; and such Returning Officer shall, for such refusal or neglect, incur a penalty of one thousand dollars. 32 V. c. 21, s. 23 (3).

If only one candidate proposed within one hour, he to be declared elected.

**51.** If only one candidate is nominated, or the electors there and then present agree in the choice so to be made of the person to represent them, the Returning Officer shall, at the expiration of one hour from the nomination of such candidate, and not before, close the election, and shall then and there openly proclaim the person so chosen to be duly elected. 32 V. c. 21, s. 23 (4).

Returning Officer to publish names and addresses of agents.

**52.** The Returning Officer shall announce from the hustings on the day of nomination, and at the expense of the candidate shall publish on or before the day of nomination, the name and address or the names and addresses of the agent or agents appointed in pursuance of the one hundred and eighty-third section of this Act; such publication shall be in some newspaper if such there be, published or circulated within the Electoral District for which the election is to take place. 36 V. c. 2, s. 8.

## WITHDRAWAL OF CANDIDATES.

Withdrawal of candidates.

**53.** Any candidate nominated may withdraw at any time after his nomination and before the opening of the poll, by

filing with the Returning Officer a declaration in writing to that effect, signed by himself, and any votes cast for the candidate who shall have so withdrawn shall be null and void; and in case after the withdrawal there should remain but one candidate, then it shall be the duty of the Returning Officer to return as duly elected the candidate so remaining, without waiting for the day fixed for holding the poll, or for the closing of the poll, if such withdrawal be filed on the polling day. 38 V. c. 3, s. 19.

**54.** In case a candidate dies after being nominated and before the close of the poll, the Returning Officer may fix new days for the nomination of candidates, and for the election, and in such case the nomination day shall be the nearest day possible not being a Sunday or statutory holiday, after allowing the number of days required by law between the posting up of the proclamation and the nomination day; and in every such case the Returning Officer shall with his return make to the Clerk of the Crown in Chancery a report of the cause which occasioned the postponement of the election. 39 V. c. 10, s. 15.

Case of death of candidate provided for.

#### PROCEEDINGS WHEN A POLL IS GRANTED.

**55.** When at any election a poll has been granted, the Returning Officer, immediately after having granted such poll, and before adjourning his proceedings, shall publicly proclaim from the hustings the day previously fixed in and by his first proclamation, and the places at which the poll shall be so opened in each polling subdivision or ward (as the case may be), for the purpose of then and there taking and recording the votes of the electors according to law. 32 V. c. 21, s. 29.

Day of opening the poll to be proclaimed.

**2.** The day to be fixed for opening the poll as aforesaid shall not be a Sunday, New Year's Day, Good Friday, Christmas Day, the first day of July, or the birthday of the Sovereign; and the poll shall be opened and held on that day only, so that there be but one and the same day's polling at any special or general election. 32 V. c. 21, s. 30.

Poll not to be held on Sundays or certain holidays.

**56.** Whenever polling subdivisions have been established by the Municipal Council, or have been provided for by the Returning Officer, a poll shall be opened and held in every such subdivision, for taking the votes of the electors therein, and a copy of the first and third parts of the voters' list for the subdivision, according to the Form (8) given in Schedule A to this Act shall be furnished for each polling place appointed therefor. 32 V. c. 21, s. 26 (4); 37 V. c. 5, s. 39 (8). See 40 V. c. 12, s. 4.

Copy of voters' list to be furnished for each polling place.

**57.** In the District of Algoma, polls shall be opened and held at the following places, namely: Killarney, Spanish River,

in Algoma.



Algoma Mills, Little Current, West Bay (Manitoulin), Gore Bay, Providence Bay, Michael's Bay, Manitowaning, Wikwemikong, (Manitoulin), Mississagua River, Bruce Mines, Garden River, Sault Ste. Marie, Batchewaning, Michipicoten, Neepigon Bay, Silver Islet, Prince Arthur's Landing, Fort William, and in such additional places, if any, as the Lieutenant-Governor in Council may from time to time direct. The Returning Officer shall establish as many polling places at the places before mentioned as he may consider requisite. 39 V. c. 10, s. 12.

Hour of  
voting.

**58.** On the day of polling the voting shall commence at nine o'clock in the forenoon, and shall finish at five in the afternoon of the same day, and the votes shall be given by ballot. 32 V. c. 21, s. 30 (2); 37 V. c. 5, s. 1.

Ballot.

#### PROCEEDINGS PRELIMINARY TO THE POLL.

##### *Deputy Returning Officers*

Appointment  
of Deputy  
Returning  
Officers.

**59.** For the purpose of taking the votes at any election, the Returning Officer, shall by a commission under his hand, in the words or to the effect of Form 9 in Schedule A to this Act, appoint some suitable person to be Deputy Returning Officer for every polling subdivision in which a polling place is to be opened and kept, and shall thereby require such Deputy Returning Officer to open and hold the poll according to law, at the time and place fixed as hereinbefore provided, and at such poll to take and record in the voters' list the particulars relating to electors voting at the said polling place, which by this Act he is directed to take and record. 37 V. c. 5, s. 39 (1).

Their oath of  
office, &c.

**60.** Each Deputy Returning Officer shall, before acting as such, take and subscribe, either before a Justice of the Peace for the County or District in which he resides, or before the Returning Officer, the oath Form 10 in Schedule A to this Act, of the taking of which oath there shall be delivered to him by the person before whom he has taken it, a certificate under the hand of such person according to the Form (11) given in said Schedule A. 32 V. c. 21, s. 31 (2).

Penalty for re-  
fusing to per-  
form the duty

**61.** Any person so appointed a Deputy Returning Officer who refuses to accept the said office, or who, after having accepted the same, refuses or neglects either to take and subscribe the said oath or to perform the duties of a Deputy Returning Officer, shall, for such neglect or refusal, incur a penalty of one hundred dollars. 32 V. c. 21, s. 31 (3).

Township  
Clerk to be De-  
puty Return-  
ing Officer for  
polling subdivi-  
sion in which  
town hall is.

**62.** In Townships divided into polling subdivisions under this Act, the Township Clerk shall be appointed by the Returning Officer to be Deputy Returning Officer for the subdivision in which the Town Hall is situate, if there be a Town Hall in such Township, but if there be no such Town Hall, then



for the subdivision in which the first meeting of the Council of the Municipality for that year was held; and in case of the absence, sickness or death of the Township Clerk, the Township Assessor or Collector shall be appointed such Deputy Returning Officer. 32 V. c. 21, s. 32.

**63.** The Returning Officer may appoint, in the manner above provided, another person to be Deputy Returning Officer, when and so often as the case may require such appointment, either by reason of the death, illness or absence of a Deputy Returning Officer previously appointed, or by reason of his refusal or neglect to act in that capacity, or otherwise: and such new Deputy Returning Officer so appointed shall perform all the duties and obligations of the said office, under the same penalties, in case of refusal or neglect on his part, as are hereinbefore imposed in like cases. 32 V. c. 21, s. 33.

Provision in case of death, etc., of Deputy Returning Officer.

### *Ballot Papers.*

**64.** Where a poll has been granted, the Returning Officer shall forthwith cause to be printed such a number of ballot papers as will be sufficient for the purposes of the election; and the number necessary for each polling subdivision shall be bound or stitched in a book of convenient size, and in such manner that the counterfoils shall continue bound or stitched when the ballot papers are detached therefrom. 37 V. c. 5, s. 3 (1).

Ballot papers to be printed.

2. Every ballot paper shall contain the names of the candidates, arranged alphabetically in the order of their surnames, or if there be two or more candidates with the same surname, of their other names, and the ballot papers may be according to the Form (12) given in Schedule A to this Act. 37 V. c. 5, s. 3 (2).

Contents and form.

3. The number and names of each candidate shall, if practicable, be distinctly printed in ink of different colours, if on the nomination day the candidates agree as to the colours; and the Returning Officer shall give to each candidate a certificate setting forth the selection of the colour made by him. 37 V. c. 5, s. 3 (3).

Number and names of candidates in different colours.

4. Every ballot paper shall have a counterfoil attached thereto; every ballot paper and counterfoil shall specify the name of the Electoral District for which it is to be used; and every ballot paper shall have a number printed on the back thereof, and the same number shall be printed on the face of the counterfoil attached thereto: but the same number shall not be printed on more than one ballot paper to be used for the Electoral District. 37 V. c. 5, s. 3 (4).

Counterfoil.

**65** In addition to the ballot papers hereinbefore referred to, the Returning Officer shall cause to be printed such a number

Tendered ballot papers

of other ballot papers (hereinafter called "tendered ballot papers,") to be used in the manner hereinafter directed, as will be sufficient for the purposes of the election. 37 V. c. 5, s. 3 (5).

Contents and form.

2. Such tendered ballot papers shall be in the same form as the ballot papers hereinbefore referred to, but shall be of a colour differing from the same; and upon the back of the tendered ballot papers, and upon the face of the counterfoils attached thereto, shall be printed the words "*Tendered Ballot Paper.*" 37 V. c. 5, s. 3 (6).

To be numbered, &c.

3. The tendered ballot papers and the counterfoils attached thereto shall be numbered in a manner similar to that in which the other ballot papers and counterfoils are hereinbefore directed to be numbered, and shall be bound or stitched in like manner. 37 V. c. 5, s. 3 (7).

Returning Officer to furnish Deputies with ballot books, &c.

**66.** The Returning Officer shall, before the opening of the poll, deliver or cause to be delivered to every Deputy Returning Officer, the books containing the ballot papers and tendered ballot papers, with their respective counterfoils attached, which have been prepared for use in the polling subdivision for which such Deputy Returning Officer is appointed to act: and shall also furnish to the Deputy Returning Officer, or see that he is furnished with the necessary materials for voters to mark the ballot papers, and such materials shall be kept at the polling place by the Deputy Returning Officer, for the convenient use of voters. 37 V. c. 5, s. 3 (8).

#### *Ballot Boxes.*

Delivery of ballot boxes to Deputy Returning Officers.

**67.** When it becomes necessary, for the purposes of an election, to use the ballot boxes, it shall be the duty of the Returning Officer, two days, at least, before the polling day, to deliver one of the ballot boxes to every Deputy Returning Officer appointed for the purposes of the election. 37 V. c. 5, s. 2 (3).

Deputy Returning Officer to procure ballot boxes.

**68.** It shall be the duty of the Deputy Returning Officer, in every polling subdivision not supplied with a ballot box within the time prescribed, forthwith to procure one to be made. 37 V. c. 5, s. 2 (6).

#### *Directions to Voters.*

Returning Officer to furnish Deputies with directions for voters' guidance.

**69.** The Returning Officer shall, before the opening of the poll, deliver or cause to be delivered to every Deputy Returning Officer such a number of printed directions for the guidance of voters in voting, as he may deem sufficient, and shall so deliver or cause to be delivered, at least ten copies of such printed directions; such directions shall be printed in conspicuous characters, and may be according to Form 13 in Schedule A to this Act. 37 V. c. 5, s. 4.

**70.** Every Deputy Returning Officer shall, before the opening of the poll, or immediately after he has received such printed directions from the Returning Officer, if he did not receive the same before the opening of the poll, cause such printed directions to be placarded outside the polling place for which he is appointed to act, and also in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling. 37 V. c. 5, s. 4 (2).

Deputies to placard the directions.

*Certificates as to Assessment Roll.*

**71.** The Returning Officer shall, before the opening of the poll, obtain from the Clerk of the Municipality, and deliver, or cause to be delivered to every Deputy Returning Officer, a certificate in the words or to the effect of Form 14 in Schedule A to this Act, of the day when the assessment roll, upon which the voters' list to be used at the election is based, was returned by the Assessor, and also of the day upon which the same was finally revised and corrected.

Returning Officer to furnish Deputy Returning Officer with certificate of certain dates.

**2.** The Clerk shall give such certificates upon being required so to do by the Returning Officer or any other person who applies for the same, and shall be subject to a penalty of two hundred dollars in case of neglect or refusal.

Clerk to give certificate.

**3.** For every such certificate the Clerk shall be entitled to receive the sum of twenty-five cents.

Fee.

**4.** Such certificate when delivered to the Deputy Returning Officer shall be the evidence upon which he shall act in inserting in the oath to be administered to voters the date of the return, or final revision, of the assessment roll, as the case may be. 40 V. c. 10, s. 6.

Certificates to be evidence of dates.

*Lists of Voters.*

**72.** Subject to the provisions in the six next succeeding sections contained, the first and third parts of the last list of voters certified by the Judge, and delivered or transmitted to the Clerk of the Peace, under "*The Voters' Lists Act*," at least one month before the date of the writ of election, shall be the proper list to be used at an election to the Legislative Assembly. 39 V. c. 11, s. 9. See 40 V. c. 12, s. 4.

What voters' list to be used.

Rev. Stat. c. 9.

**73.** Subject to the provisions of the one hundred and second section of this Act, no person shall be admitted to vote unless his name appears on such list; and no question of qualification shall be raised at any election, except to ascertain whether the person tendering his vote is the same person intended to be designated in the said list; and other questions of qualification shall be raised and decided on election petition only. 39 V. c. 11, s. 9.

Only the persons named in the proper lists to vote.

The case of time for appealing from by-law for dividing into polling subdivisions having expired, and no voters' lists filed, &c.

**74.** In case a Municipal Council has by by-law divided the Municipality into polling subdivisions, and the time for appealing from the by-law has expired, and no lists of voters for such subdivisions have been filed with the Clerk of the Peace, as required by "*The Voters' Lists Act*," but a list of the voters of the Municipality or of the several wards therein has been duly certified by the Judge, the said list shall be the proper list of voters for the election; and the Returning Officer shall cause the names on the said voters' list to be divided into separate lists for the Deputy Returning Officers, in accordance with the polling subdivisions provided for by the by-law. 38 V. c. 3, s. 11.

The case of new territory added to city, town or village or a new city, town or village erected with added territory, and no voters' lists including such new territory.

**75.** Where any territory is added for municipal purposes to any City, Town or Village belonging to, or constituting an Electoral District other than that to which such territory previously belonged, or when a Town with additional territory is erected into a City, or a Village with additional territory is erected into a Town, or in case a Village is formed including territory which belonged to an Electoral District other than that to which the Village belongs, and an election takes place previous to voters' lists including the names of persons entitled to vote in such territory, being made out for the City, Town or Village, or before such lists are certified by the County Judge, then all persons who would have been qualified as electors if such territory remained separate from the City, Town or Village, and if the election had been for the Electoral District to which such territory formerly belonged, shall be entitled to vote in the City, Town or Village. 38 V. c. 3, s. 16.

Duty of Returning Officer in above cases of added territory as to voters' lists.

**76.** In all such cases the Returning Officer shall extract from the proper voters' lists of the Municipality or Municipalities to which such territory formerly belonged, containing the names of voters entitled to vote in respect of such territory, the names of the several voters in such lists entitled to vote in such territory, and shall place such names in supplementary lists to be signed by the Returning Officer, and to be delivered by him to the proper Deputy Returning Officers, for the purpose of enabling the persons named in such lists to vote at the said election. 38 V. c. 3, s. 17.

Duty where voters' list embraces portions of two Electoral Districts.

**77.** Where a voters' list embraces territory comprising portions of two or more Electoral Districts each Returning Officer shall in like manner prepare and deliver to the proper Deputy Returning Officers supplementary lists of voters for that portion of such territory which lies within the Electoral District for which he is Returning Officer. 38 V. c. 3, s. 17.

Provision for municipalities in districts wherein an assessment roll but no

**78.** In any Municipality or Township in the Electoral Districts of North Victoria, East Peterborough, North Hastings, North Renfrew, South Renfrew, and Muskoka and Parry Sound where there is an assessment roll, but for which no voters' lists



containing the names of the voters in such Municipality or Township have been filed with the Clerk of the Peace, or certified by the County Judge, the Returning Officer shall, upon receipt of the writ, procure from the Clerk of the Municipality an alphabetical list or lists of all persons entitled to vote in such Municipality or Township, or in the polling subdivisions thereof (if the Municipality or Township is divided into polling subdivisions); and the Clerk shall forthwith, upon being requested so to do, furnish the Returning Officer with such list or lists, having first certified to the correctness thereof before a Justice of the Peace; and every list of voters so prepared (or a similar list otherwise procured by the Returning Officer, at the expense of the Clerk, in case of the failure of the Clerk to furnish the same within a reasonable time), shall be the voters' list to be used at the election for such Municipality or Township or polling subdivision, and in every Municipality or Township in the said Districts in which there is an assessment roll, it shall be necessary that the name of the elector shall appear upon the list of voters prepared under this section, or under the "*The Voters' Lists Act*," and in such case the same provisions as to qualification of voters and other matters shall apply as in other Electoral Districts, and the oath or affirmation to be required of voters shall be the same. 38 V. c. 3, s. 22.

voters' list  
filed or  
certified.

Rev. Stat. c. 9.

**79.** Every Returning Officer, upon granting a poll at any election, shall procure from the Clerk of the Peace a copy, according to Form 8 in Schedule A to this Act and certified by the said Clerk of the Peace to be correct, of the proper list of voters, filed in his office, for each polling subdivision and shall cause the same to be delivered to the Deputy Returning Officer appointed to preside at the polling place in such polling subdivision. 32 V. c. 21, ss. 34 & 35; 37 V. c. 5, s. 39 (8).

Returning  
Officer to de-  
liver to his  
Deputies cer-  
tified copies of  
voters' lists.

To procure  
lists when re-  
quisite.

**80.** The Deputy Returning Officer shall, upon receiving the copy of the voters' list for the polling subdivision for which he is to act, prefix a number to every name in such copy, and such numbers so prefixed need not be consecutive numbers, but may be chosen arbitrarily by the Deputy Returning Officer: but the same number shall not be prefixed to more than one name; and the Deputy Returning Officer shall take all necessary precautions for concealing and shall conceal from all persons (except the Poll Clerk) the numbers so prefixed by him to the names on the copy of the voters' list. 37 V. c. 5, s. 6.

Deputies to  
prefix num-  
bers to names  
on voters' lists,  
and conceal  
the numbers.

#### *Poll Clerks.*

**81.** Every Deputy Returning Officer shall, by a commission under his hand and according to Form 15 in Schedule A to this Act, appoint a Poll Clerk to assist him in taking the poll according to law; and each Poll Clerk appointed as aforesaid shall, before acting as such, take and subscribe, either before a Justice of the Peace for the County or District in which he resides, or

Deputy Re-  
turning Offi-  
cers to appoint  
Poll Clerks,  
who must be  
sworn.



before the Returning Officer, or such Deputy Returning Officer, the oath Form 16 in Schedule A to this Act, of the taking of which oath there shall be delivered to him, by the person before whom it has been taken, a certificate under his hand, according to Form 17 in Schedule A to this Act. 32 V. c. 21, s. 36.

Penalty.

2. Any person so appointed a Poll Clerk who refuses to accept the said office, or who, after having accepted the same, refuses or neglects either to take and subscribe the oath hereby required of him, or to perform the duties of a Poll Clerk, shall, for such neglect or refusal, incur a penalty of forty dollars. 32 V. c. 21, s. 36 (2).

Their duties.

82. Each Poll Clerk shall, at the polling place for which he is appointed, aid and assist in the performance of the duties of his office the Deputy Returning Officer appointed to open and keep the poll at such place in conformity with this Act, and shall obey the orders of the said Deputy Returning Officer. 32 V. c. 21, s. 37.

To act for  
Deputy Re-  
turning Officer  
in certain  
cases.

83. If the Deputy Returning Officer refuses or neglects to perform the duties of his office, or becomes unable to perform them, either by death, illness, absence or otherwise, and if in any such case no other Deputy Returning Officer duly appointed by the Returning Officer in the place of the former, appears at the polling place, then such Poll Clerk shall, under the same penalties as are hereinbefore imposed in like cases on a Deputy Returning Officer, act at such poll as Deputy Returning Officer, and perform all the duties and obligations of that office, in the same manner as if he had been appointed Deputy Returning Officer by the Returning Officer, and without being bound to take any new oath for that purpose. 32 V. c. 21, s. 37 (2).

In which case  
he may ap-  
point another  
Poll Clerk.

84. Wherever any Poll Clerk, in the case hereinbefore provided, acts as Deputy Returning Officer, he may appoint by a commission under his hand, according to Form 15 in Schedule A to this Act, another person as Poll Clerk, to aid and assist him as aforesaid in the performance of the duties of his office, and may administer to such person the oath required of a Poll Clerk by this Act; and the Poll Clerk so appointed shall have the same duties and obligations as if he had been appointed Poll Clerk by the Deputy Returning Officer himself. 32 V. c. 21, s. 37 (3).

Deputy Re-  
turning Officer  
may appoint  
another Poll  
Clerk in cer-  
tain cases.

85. Wherever any Poll Clerk, appointed under the requirements of this Act, refuses or neglects to perform his duty as such, or becomes unable to perform it, either by death, illness, absence or other cause, the Deputy Returning Officer, whose Poll Clerk he was, may appoint by a commission under his hand, according to Form 15 in Schedule A, another person as Poll Clerk at the said polling place, to aid and assist him as

aforesaid in the duties of his office, and may administer to him the oath required of a Poll Clerk by this Act. 32 V. c. 21, s. 37 (4),

#### WHERE VOTERS TO VOTE.

**86.** In case the name of any person entitled to vote is entered on the list of voters for more than one polling subdivision in any Electoral District, such person may vote at the polling place for any one of such subdivisions in his discretion, but no person shall vote or offer to vote at more than one polling place in any Electoral District, at any election, under a penalty of two hundred dollars. 32 V. c. 21, s. 27.

Penalty for voting at more than one polling place.

**87.** The Returning Officer, on the request of any elector entitled to vote who has been appointed Deputy Returning Officer or Poll Clerk, or who has been named the agent of any of the candidates at a polling place other than the one where he is entitled to vote, shall give to such elector a certificate that such elector is entitled to vote at such election at the polling place where he is stationed during the polling day; and such certificate shall also state the property or other qualification in respect of which he is entitled to vote.

Deputy Returning Officers and agents may vote at polling places where they are employed.

**2.** On the production of such certificate such elector shall have the right to vote at the polling place where he is stationed during the polling day, instead of at the polling place of the polling subdivision where he would otherwise have been entitled to vote; and the Deputy Returning Officer shall attach the certificate to the voters' list; but no such certificate shall entitle any such elector to vote at such polling place unless he has been actually engaged as such Deputy Returning Officer, Poll Clerk, or agent during the day of polling, or shall entitle any agent to vote who is disqualified under section five of this Act. 38 V. c. 3, s. 28.

On production of certificate of Returning Officer.

**88.** In case of a Deputy Returning Officer voting at the polling place where he has been appointed to be Deputy Returning Officer, the Poll Clerk appointed to act at such polling place, or in the absence of the Poll Clerk any agent of a candidate authorized to be present, may administer to such Deputy Returning Officer the oath required by law to be taken by voters. 39 V. c. 10, s. 19.

Administration of oath to D.R.O. voting at his polling place.

#### THE POLL.

**89.** The Deputy Returning Officer shall, immediately before the commencement of the poll, show the ballot box to such persons as are present in the polling place, so that they may see that it is empty; and he shall then lock the box, and place his seal upon it in such manner as to prevent its being opened without breaking the seal; and he shall then place the box in his view for the receipt of ballot papers, and shall keep it so locked and sealed. 37 V. c. 5, s. 7.

Deputy to show box empty, lock and seal it.

Conduct of  
Deputy on  
tender of vote.

**90.** When any person claiming to be entitled to vote presents himself for the purpose of voting, the Deputy Returning Officer shall proceed as follows:—

Name.

1. He shall ascertain that the name of such person is entered, or purports to be entered, upon the voters' list for the polling subdivision for which such Deputy Returning Officer is appointed to act; 37 V. c. 5, s. 8 (1).

Recording.

2. He shall record or cause to be recorded in the proper columns of the voters' list, the residence and the legal addition of such person; 37 V. c. 5, s. 8 (2).

Oath.

3. If such person takes the oath or affirmation required to be taken by voters in the manner directed by this Act, the Deputy Returning Officer shall enter, or cause to be entered, opposite such person's name, in the proper column of the said voters' list, the word "*Sworn*," or "*Affirmed*," according to the fact; 37 V. c. 5, s. 8 (3).

Objection.

4. Where the vote is objected to by any candidate or his agent, the Deputy Returning Officer shall enter the objection, or cause the same to be entered, in the voters' list, by writing opposite the name of such person, in the proper column, the words "*Objected to*," stating at the same time by which candidate or on behalf of which candidate the objection has been made, by adding after the words "*Objected to*," the name only of such candidate; 37 V. c. 5, s. 8 (4).

Refusal to  
take the oath.

5. Where such person as aforesaid has been required to take the oath or affirmation, and refuses to take the same, the Deputy Returning Officer shall enter or cause to be entered opposite the name of such person, in the proper column of the voters' list, the words "*Refused to be sworn*," or "*Refused to affirm*," according to the fact; 37 V. c. 5, s. 8 (5).

Voter refusing  
to be sworn.

6. No person who has refused to take the oath or affirmation of qualification required by law, when requested so to do, shall receive a ballot paper or be admitted to vote; and the vote of such person if taken and received shall be null and void; and the Deputy Returning Officer, for having taken and received such vote or caused the same to be taken and received, shall incur a penalty of two hundred dollars. 37 V. c. 5, s. 8 (5); 39 V. c. 10, s. 20.

Deputy to  
sign his name  
on ballot paper  
and counter-  
foil.

7. When the proper entries respecting the person so claiming to vote have been made in the voters' list in the manner prescribed, the Deputy Returning Officer shall sign his name or initials upon the back of a ballot paper and upon the counterfoil attached thereto; 37 V. c. 5, s. 8 (6).

Delivery of  
paper to voter.

8. The ballot paper shall be detached from the counterfoil and delivered to such person; 37 V. c. 5, s. 8 (7).

9. The counterfoil shall be retained in the book by the Deputy Returning Officer, who shall write or otherwise mark upon such counterfoil the number prefixed to the name of such person upon the voters' list; and opposite the name of such person in the voters' list, a mark shall be placed to denote that he has received a ballot paper, but not showing the particular ballot paper which he has received. 37 V. c. 5, s. 8 (8).

Counterfoil,  
conduct as to

91. The Deputy Returning Officer shall receive the vote of any person whose name he finds in the proper list of voters furnished to him, provided that such person, if required by any candidate, or the agent of any candidate, or by the Deputy Returning Officer himself, takes the oath or affirmation, hereinafter mentioned, which such Deputy Returning Officer is hereby empowered to administer.

Persons on  
voters' list to  
be allowed to  
vote, on tak-  
ing a certain  
oath if re-  
quired.

2. Such oath shall be according to Form 18 in Schedule A to this Act, where the person claims to be entitled to vote in respect of real estate; and according to Form 19 in said Schedule A, where the person claims to be entitled to vote in respect of income; and according to Form 20 where the person claims to be entitled to vote as a farmer's son; and according to Form 21 in said Schedule A where the person claims to be entitled to vote in respect of a supplementary voters' list in the cases mentioned in sections seventy-five and seventy-seven of this Act.

Form of oath.

In cases in  
secs. 75 and 77,  
mentioned.

3. No other oath or affirmation shall be required of any person whose name is entered on any such list of voters as aforesaid. 32 V. c. 21, s. 41; 36 V. c. 2, s. 6; 38 V. c. 3, s. 15; 38 V. c. 3, s. 17; 39 V. c. 10, s. 10.

92. In the District of Algoma, and in such of the Municipalities, Townships and places mentioned in section seventy-eight of this Act, as have no assessment rolls, the person claiming to be entitled to vote shall declare his name, place of residence and occupation or calling, and also the property in respect of which such person claims to be entitled to vote, and whether he so claims as owner, tenant or occupant of such property; and the Deputy Returning Officer shall cause the said particulars to be entered upon a list in the same manner as is prescribed in the one hundred and second section of this Act, with reference to the tendered votes list, and the list herein provided for shall be dealt with in the same manner as the tendered votes list is directed to be dealt with by this Act. 38 V. c. 3, s. 24.

In Algoma  
and places  
mentioned in  
s. 78, elector  
to make cer-  
tain declara-  
tion.

Deputy Re-  
turning Officer  
to enter the  
particulars  
thereof.

2. In the said District and in any such place, every person who offers to vote at any polling place shall, if required by any candidate, or the agent of any candidate, or by the Deputy Returning Officer, take, in lieu of the oath prescribed by the ninety-first section of this Act, the oath or affirmation according to Form 22 in Schedule A to this Act, which the Deputy

Oath.



Returning Officer is hereby empowered to administer. 32 V. c. 21, s. 41 (2); 38 V. c. 3, s. 23.

Deputy Returning Officer must swear voters in certain cases.

**93.** Whenever any Deputy Returning Officer has reason to know or believe that fraud or violence is being practised in violation of the rights of electors, by which undue votes are tendered, or that any voter is not qualified, or has already voted at the said election and offers to vote again, or tenders his vote under a false name or designation, or personates or represents himself falsely as being on the list of voters, such Deputy Returning Officer, under a penalty of two hundred dollars, shall administer the oath authorized by law to such voter, whether he be required to do so or not by any party; and mention thereof shall be made in the voters' list. 32 V. c. 21, s. 42; 37 V. c. 5, s. 39 (8).

Penalty.

Deputy to conceal number on the ballot paper.

**94.** The Deputy Returning Officer shall take all necessary precautions for concealing, and shall conceal, as far as possible, from all persons present (including the Poll Clerk and the agents of the candidates, as well as all other persons), the number printed upon the ballot paper delivered to any person, and upon the counterfoil which was attached thereto, and shall not permit the counterfoil to be inspected by any person. 37 V. c. 5, s. 8 (9).

Deputy to explain mode of voting.

**95.** The Deputy Returning Officer may, and upon request shall, either personally or through his Clerk, explain to the voter, as concisely as possible, the mode of voting, and the colours in which the numbers and names of candidates are printed on the ballot paper. 37 V. c. 5, s. 8 (10).

Interpreter may be employed in certain cases.

**96.** Whenever any elector does not understand the English language, the Deputy Returning Officer may employ an interpreter to translate the oath or affirmation required of such elector, as well as any lawful questions necessarily put to him, and his answers; and such interpreter shall take before the said Deputy Returning Officer the oath (or if he be one of the persons permitted by law to affirm in civil cases, the affirmation) following:

His oath.

"I swear (or affirm) that I will faithfully translate such oaths, declarations, questions and answers as the Deputy Returning Officer shall require me to translate at this election: So help me God."

32 V. c. 21, s. 43.

Voting, marking ballot paper.

**97.** Upon receiving from the Deputy Returning Officer the ballot paper so prepared as aforesaid, the person receiving the same shall forthwith proceed into one of the compartments provided for the purpose, and shall then and therein mark his ballot paper in the manner mentioned in the directions contained in Form 13 in Schedule A. to this Act, by placing a cross on the right-hand side, opposite the name of the candidate for whom he desires to vote, thus x; and he shall then fold the ballot paper across so



as to conceal the names of the candidates, and the mark upon the face of such paper, and so as to expose the initials of the Deputy Returning Officer, and the number on the back, and leaving the compartment, shall, without delay, and without showing the front to any one, or so displaying the ballot paper as to make known to any person the name of the candidate for or against whom he has marked his vote, deliver such ballot paper so folded to the Deputy Returning Officer, who shall, without unfolding the same, or in any way disclosing the names of the candidates, or the mark made by such elector, verify his own initials, and the number on the back of the paper, and at once deposit the same in the ballot box in the presence of all persons entitled to be present, and then present in the polling place; and the voter shall forthwith leave the polling place. 37 V. c. 5, s. 9.

**98.** While any voter is in any balloting compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment, or to be in any position from which he can observe the mode in which the voter marks his ballot paper. 37 V. c. 5, s. 10.

Exclusion  
from balloting  
compartment.

**99.** No person who has received a ballot paper or tendered ballot paper from the Deputy Returning Officer shall take the same out of the polling place; and any person having so received a ballot paper or tendered ballot paper, who leaves the polling place without first delivering the same to the Deputy Returning Officer in the manner prescribed, shall thereby forfeit his right to vote, and the Deputy Returning Officer shall make an entry in the voters' list, in the column for remarks, to the effect that such person received a ballot paper, but took the same out of the polling place, or returned the same declining to vote, as the case may be, and in the latter case the Deputy Returning Officer shall immediately write the word "*Declined*" upon such ballot paper, and shall preserve it to be returned to the Returning Officer. 37 V. c. 5, s. 11.

Voter not to  
take his paper  
from polling  
place.

**100.** In case of an application by any person claiming to be entitled to vote, who is incapacitated by blindness or other physical cause from marking his ballot paper, or in case of any person claiming to be entitled to vote who makes a declaration that he is unable to read, the proceedings shall be as follows:—

Proceedings in  
case of incapacity to mark  
paper.

1. The Deputy Returning Officer shall, in the presence of the agents of the candidates, cause the vote of such person to be marked on a ballot paper in manner directed by such person, and shall cause the ballot paper to be placed in the ballot box.

2. The Deputy Returning Officer shall state or cause to be stated in the voters' list, by an entry opposite the name of such person in the proper column of the said voters' list, that the vote of such person is marked in pursuance of this section, and the reason why it is so marked.

3. The declaration of inability to read may be according to Form 23 in Schedule A to this Act, and shall be made by the person claiming to be entitled to vote, at the time of the polling, before the Deputy Returning Officer, who shall attest the same as nearly as may be according to Form 24 in Schedule A to this Act, and the said declaration shall be given to the Deputy Returning Officer at the time of voting. 37 V. c. 5, s. 12.

Proceedings in case an elector applies for a paper after another has voted as such elector.

**101.** If any person representing himself to be a particular elector named on the voters' list applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly taking the oath authorized by law to be administered to voters at the time of polling, be entitled to mark a tendered ballot paper, but such tendered ballot paper shall be given to the Deputy Returning Officer, and shall be placed by him in an envelope, which shall be securely sealed, and upon the envelope he shall make an endorsement indicating the election at which, and the polling subdivision in which the same is used, and the Deputy Returning Officer shall then deposit such envelope in the ballot box; and such tendered ballot paper shall not be counted by the Deputy Returning Officer; and the name and number on the voters' list of such person shall be endorsed upon the counterfoil by the Deputy Returning Officer; and the Deputy Returning Officer shall, upon a list to be called the "Tendered Votes List," enter the name and number on the voters' list of such person, or cause the same to be so entered. 37 V. c. 5, s. 13.

Proceedings in case a person claims to vote, and that his name has been improperly omitted from voters' list.

**102.** If any person whose name is not entered on the voters' list claims that his name ought to have been so entered, and that it has been improperly omitted therefrom, such person shall, upon duly taking an oath according to Form 25 in Schedule A to this Act, or to the like effect, be entitled to mark a tendered ballot paper; and such tendered ballot paper, instead of being put into the ballot box, shall be given to the Deputy Returning Officer, and shall be placed by him in an envelope and deposited in the ballot box, in the manner directed by the last preceding section with reference to the ballot papers marked in pursuance thereof; and such tendered ballot paper shall not be counted by the Deputy Returning Officer; and the name, place of residence and occupation or calling of such person shall be endorsed upon the counterfoil by the Deputy Returning Officer; and the Deputy Returning Officer shall enter or cause to be entered upon the tendered votes list the name, place of residence and occupation or calling of such person, and also a short description of the property in respect of which such person claims to have been entitled to have been entered on the voters' list, and whether it is as an owner, tenant or occupant of such property that such person claims as aforesaid. 37 V. c. 5, s. 14.

**103.** A person claiming to be entitled to vote, who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the Deputy Returning Officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the Deputy Returning Officer, obtain another ballot paper in the place of the ballot paper so delivered up, and the Deputy Returning Officer shall immediately write the word "*Cancelled*" upon such ballot paper and upon the counterfoil, and preserve it to be returned to the Returning Officer. 37 V. c. 5, s. 15.

Proceedings in case ballot paper spoiled so that it can not be used.

**104.** During the time appointed for polling no person shall be entitled or permitted to be present in any polling place, other than the officers, candidates, clerks or agents authorized to attend at such polling place, and such voters as are for the time being actually engaged in voting: but it shall at all times be lawful for the Deputy Returning Officer to have present, or to summon to his assistance in such polling place, any police constable or peace officer for the purpose of maintaining order, or of preserving the public peace, or preventing any breach thereof, or of removing any person or persons who may, in the opinion of such Deputy Returning Officer, be obstructing the polling or wilfully violating any of the provisions of this Act. 37 V. c. 5, s. 16.

Who may be present at polling place.

#### PROCEEDINGS AFTER THE CLOSE OF THE POLL.

**105.** Immediately after the close of the poll in every polling place, the Deputy Returning Officer shall, in the presence of the Poll Clerk, and of such of the candidates or of their agents as may then be present, open the ballot box, and proceed to count the votes as follows:—

Counting of the votes by D. R. O.

1. He shall examine the ballot papers, keeping them with their printed faces upwards, and shall take all proper precautions for preventing any person from seeing the numbers printed on the back of the paper. 37 V. c. 5, s. 17 (1).

Ballot papers to be examined.

2. Any ballot paper which has not on its back the name or initials of the Deputy Returning Officer, or on which votes are given to more candidates than are to be elected, or on which anything except the number and initials or name of the Deputy Returning Officer on the back is written or marked, by which the voter can be identified, shall be void, and shall not be counted. 37 V. c. 5, s. 17 (2).

Ballot papers to be counted.

3. The Deputy Returning Officer shall take a note of any objection made by a candidate, or by his agent, or by any elector present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection; and the decision of the Deputy Returning Officer shall be final, subject

Note of objections to ballot papers to be taken.



only to reversal on a recount by the County Court Judge, or on petition questioning the election or return. 39 V. c. 10, s. 21.

Objections to  
be numbered.

4. Every objection to a ballot paper shall be numbered, and a corresponding number shall be placed on the back of the ballot paper, and shall be initialed by the Deputy Returning Officer. 39 V. c. 10, s. 21 (2).

Rejected  
ballots to be  
endorsed.

5. The Deputy Returning Officer shall endorse "*Rejected*" on any ballot paper which he may reject as invalid, and shall endorse "*Rejection objected to*," if an objection be made to his decision. 37 V. c. 5, s. 17 (3).

Statement of  
result.

6. The Deputy Returning Officer shall then count up the votes given for each candidate upon the ballot papers not rejected, and make up a written statement, in words as well as in figures, of the number of votes given for each candidate, and of the number of ballot papers rejected and not counted by him, which statement shall be made under the several heads following:—

- (a) Name of polling subdivision and of Electoral District, and date of election;
  - (b) Number of votes for each candidate;
  - (c) Papers wanting signature or initials of Deputy Returning Officer;
  - (d) Papers rejected as voting for more candidates than entitled to;
  - (e) Papers rejected as having a writing or mark by which voter could be identified;
  - (f) Papers rejected as unmarked or void for uncertainty;
- 37 V. c. 5, s. 17 (4).

Signed.

7. Upon the completion of such written statement, it shall be forthwith signed by the Deputy Returning Officer, the Poll Clerk, and such of the candidates or their agents as may be present, and desire to sign such statement. 37 V. c. 5, s. 17 (5).

Only two  
agents for a  
candidate may  
be present.

106. No more than two agents for any candidate shall be entitled to be present at the same time at the counting of the votes. 37 V. c. 5, s. 17 (6).

Deputies to  
certify the  
number of  
voters.

107. Every Deputy Returning Officer shall, at the close of the poll, certify under his signature on the voters' list, in full words, the total number of persons who have voted at the polling place at which he has been appointed to preside. 37 V. c. 5, s. 39 (3).

Certificates to  
candidates of  
the state of  
poll.

108. At the close of the poll the Deputy Returning Officer, on being requested so to do, shall deliver to each of the candidates, or their agents, or in the absence of such candidates or agents, to the electors present representing the candidates res-

pectively, a certificate of the number of votes given for each candidate, and of the number of rejected ballot papers. 39 V. c. 10, s. 23.

**109.** Every Deputy Returning Officer, at the completion of the counting of votes after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets, sealed with his own seal, and the seals of such agents of the candidates as desire to affix their seals, and marked upon the outside with a short statement of the contents of such packet, the date of the day of the election, the names of the Deputy Returning Officer, and the polling subdivision and Electoral District :

Deputy  
Returning  
Officers' duties  
after votes are  
counted.

- (a) The statement of votes given for each candidate and of the rejected ballot papers ;
- (b) The used ballot papers which have not been objected to and have been counted ;
- (c) The ballot papers which have been objected to but which have been counted ;
- (d) The rejected ballot papers ;
- (e) The spoiled ballot papers ;
- (f) The tendered ballot papers ;
- (g) The counterfoils of the ballot papers ; the unused ballot papers ;
- (h) The tendered votes list ; the voters' list, with the oaths Forms 26 and 27 in Schedule A annexed thereto ; a statement of the number of voters whose votes are marked by the Deputy Returning Officer, under the heads "Physical incapacity," and "Unable to read," with the declarations of inability ; and the notes taken of objections made to ballot papers found in the ballot box ;
- (i) The commissions of the Deputy Returning Officer and Poll Clerk, with their respective oaths of office, annexed thereto. 37 V. c. 5, s. 18 (1) ; 39 V. c. 10, s. 22.

**110.** The Deputy Returning Officer shall forthwith deliver such packets personally to the Returning Officer ; and if he be unable to do so, owing to illness or other cause, he shall deliver such packets to a person chosen by him for the purpose of delivering the same to the Returning Officer ; and shall mention on the outside of the cover of each of the packets the name of the person to whom the same had been so delivered, and shall take a proper receipt therefor. 37 V. c. 5, s. 18 (2), & s. 39 (7).

Certain pack-  
ets to be  
delivered to  
the Returning  
Officer.

**111.** The packets shall be accompanied by a statement made by the Deputy Returning Officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of (1) Counted ; (2) Rejected ; (3) Unused ; (4) Spoiled ; (5) Tendered ballot papers ; (6) Ballot papers given to voters, who afterwards returned the same, declining to vote ; and (7)

Statement to  
be made by  
Deputies on  
return of bal-  
lot papers, &c.



Ballot papers taken from the polling place; which statement shall give the number of papers under each head, and is in this Act referred to as the "Ballot Paper Account." 37 V. c. 5, s. 18 (3).

No scrutiny.

**112.** No Returning Officer or Deputy Returning Officer shall grant, make or enter into any scrutiny of the votes given at any election. 32 V. c. 21, s. 45.

Oath to be made by the Deputy Returning Officer before return of voters' list.

**113.** The Deputy Returning Officer who has kept and closed the poll, shall, before returning the voters' list as aforesaid to the Returning Officer, make and subscribe, either before a Justice of the Peace for the County or District where he resides, or before the Returning Officer or the Poll Clerk, the oath, Form 26 in Schedule A to this Act, which oath shall thereafter be annexed to the said voters' list. 32 V. c. 21, s. 49 (2); 37 V. c. 5, s. 39 (8) (5); 39 V. c. 10, s. 17.

Oath to be made by Poll Clerk before return of voters' list.

**114.** Every Poll Clerk shall, after closing of the poll at which he has acted as such, but before the Deputy Returning Officer who has kept the same has returned the voters' list to the Returning Officer, as herein required, make and subscribe, either before a Justice of the Peace for the County or District in which he resides, or before the said Deputy Returning Officer, or before the Returning Officer the oath, Form 27 in Schedule A to this Act, which oath shall thereafter be annexed to the voters' list. 32 V. c. 21, s. 49; 37 V. c. 5, s. 39 (4).

Delivery of ballot boxes to Clerk of Municipality for future elections.

**115.** Within one week after the close of the election, each Deputy Returning Officer shall deliver the ballot box used in his polling subdivision to the Clerk of the Municipality within which such polling subdivision is situate; and the ballot boxes delivered to such Clerk shall be preserved by him for use at future elections for the Electoral District. 37 V. c. 5, s. 2 (4).

Counting of the votes by the Returning Officer.

**116.** The Returning Officer, after he has received the ballot papers and statements before mentioned, of the number of votes given in each polling place, shall open such statements, and shall not open any other of the said sealed packets except that containing the commissions of the Deputies and their Clerks, and from their statements shall cast up the number for each candidate; and as soon as he has thus ascertained the result of the poll, shall forthwith declare to be elected the candidate having the highest number of votes:

Casting vote.

2. Where an equality of votes is found to exist between the candidates, and the addition of a vote would entitle any of such candidates to be declared elected, the Returning Officer may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is Returning Officer. 37 V. c. 5, s. 19.

## RE-COUNT OF BALLOTS BY COUNTY JUDGE.

**117.** In case it is made to appear on the affidavit of any credible witness, to the County Judge of any County in which the Electoral District or any part thereof is situated, at any time before the Returning Officer makes his return, that any Deputy Returning Officer at any election in such Electoral District in counting the votes has improperly counted or rejected any ballot papers at any such election, the said County Judge may, where the majority for the successful candidate is under fifty votes, appoint a time, within four days after the receipt of all the ballot papers and statements relating to such election, to re-count the votes, and shall give notice in writing to the candidates or their agents of the time and place at which he will proceed to re-count the same. 39 V. c. 10, s. 25.

Re-count of  
votes by the  
County Judge.

**118.** The County Judge, the Returning Officer and his Election Clerk, and each candidate and his agent appointed to attend such re-count of votes, or in case the candidate cannot attend, then not more than two such agents and no other person, except with the sanction of the County Judge, shall be present at such re-count of the votes. 39 V. c. 10, s. 25 (1).

Who may be  
present on  
re-count.

**119.** At the time and place appointed, the said County Judge shall proceed to re-count all the votes or ballot papers returned by the several Deputy Returning Officers, and shall, in the presence of the parties aforesaid, if they attend, open the sealed packets containing—(1) the used ballot papers which have not been objected to and which have been counted; (2) the ballot papers which have been objected to but which have been counted; (3) the rejected ballot papers; (4) the spoiled ballot papers, and no other ballot papers or counterfoils; and in re-counting the said votes care shall be taken that the mode in which any particular elector has voted shall not be discovered. 39 V. c. 10, ss. 22 & 25 (2).

Opening of  
packets.

**120.** The County Judge shall, as far as practicable, proceed continuously with such re-count of the votes, allowing only time for refreshment, excluding only Sundays and, on other days (except so far as he and the parties aforesaid agree), the hours between six o'clock in the evening and nine on the succeeding morning. During the excluded time the said County Judge shall place the ballot papers and other documents relating to the election under his own seal and the seals of such other of the parties as desire to affix their seals, and shall otherwise take precautions for the security of such papers and documents. 39 V. c. 10, s. 25 (3).

The re-count  
to be a con-  
tinuous pro-  
ceeding.

**121.** The County Judge shall proceed to re-count the votes according to the rules set forth in sections one hundred and five and one hundred and six of this Act, and shall verify or correct the ballot paper account and statement of the number

Procedure on  
re-count.

of votes given for each candidate; and upon the completion of such re-count, or as soon as he has thus ascertained the result of the poll, he shall seal up all the said ballot papers in separate packets, and shall forthwith certify the result to the Returning Officer, who shall then declare to be elected the candidate having the highest number of votes; and in case of an equality of votes, the Returning Officer shall have the casting vote, as provided in section one hundred and sixteen of this Act. 39 V. c. 10, s. 25 (4).

Returning  
Officer not to  
return till  
receipt of cer-  
tificate from  
County Judge

**122.** The Returning Officer, after the receipt of a notice from the County Judge of such re-count of ballots, shall delay making his return to the Clerk of the Crown in Chancery until he receives a certificate from the County Judge of the result of such re-count, and upon receipt of such certificate the Returning Officer shall proceed to make his return as provided in this Act. 39 V. c. 10, s. 25 (5).

#### PROCEEDING IN CASE OF LOSS OR INJURY OF VOTERS' LIST OR OTHER DOCUMENTS.

Proceedings in  
case voters'  
list is stolen,  
&c.

**123.** In case any voters' list is stolen or taken from its lawful place of deposit for the time being, or has been lost or destroyed, or otherwise placed beyond the reach of the Deputy Returning Officer to whom the custody of such voters' list for the time being belonged, at any time before he has made his return of the same to the Returning Officer, such Deputy Returning Officer shall attend personally on the Returning Officer, and report to him the fact of such loss of the said voters' list; and the Poll Clerk of such Deputy Returning Officer, so soon as he is informed of such loss personally or by letter, either by or from such Deputy Returning Officer, or the Returning Officer himself, or has other good reasons for believing that such loss has occurred, shall forthwith attend personally on such Returning Officer. 32 V. c. 21, s. 53; 37 V. c. 5, s. 39 (8).

Examination  
of Deputy Re-  
turning Officer  
and Poll Clerk,  
&c.

**2.** The Returning Officer shall examine such Deputy Returning Officer and Poll Clerk upon oath or affirmation, as the occasion may require, as to such loss of the said voters' list, and the contents thereof, which examination shall be taken down by him in writing, and be subscribed by such Deputy Returning Officer and Poll Clerk, and annexed to the return in lieu of such voters' list. 32 V. c. 21, s. 53 (2); 37 V. c. 5, s. 39 (8).

Punishment of  
Deputy Re-  
turning Officer  
or Poll Clerk  
refusing to at-  
tend or be  
sworn.

**3.** If either the Deputy Returning Officer or the Poll Clerk omits to attend on such Returning Officer as hereby required, or refuses to be sworn or affirmed by such Returning Officer as aforesaid, he shall incur a penalty of two hundred dollars, and in the case of such refusal to be sworn or affirmed as aforesaid, may be committed by the said Returning Officer to



the common gaol of the County or District, until thence discharged by an order in that behalf made by the Legislative Assembly. 32 V. c. 21, s. 53 (3).

**124.** When the Returning Officer, having received any voters' list, or any document connected with the election, has reason to believe that the same has been altered, injured or obliterated, or that additions have been made thereto, he shall establish the true facts in the manner above provided in case of the loss of any voters' list. 32 V. c. 21, s. 54; 37 V. c. 5, s. 39 (8).

*Duty of Returning Officer believing any election documents to be altered, &c.*

#### RETURN, PRESERVATION OF DOCUMENTS, ETC.

**125.** The Returning Officer shall make and transmit his return to the Clerk of the Crown in Chancery

*Return when to be made by Returning Officer to Clerk of the Crown in Chancery.*

(a) Where the majority of the successful candidate is over fifty, within ten days after he has ascertained the result of the poll, and

(b) Where the majority of the successful candidate is under fifty, after the fifth day from the day on which he receives the last return of any Deputy Returning Officer, and within ten days after he has ascertained the result of the poll, unless he has received a notice from the County Judge of a recount of ballots, in which case he shall delay making his return until he receives a certificate from the County Judge of the result of such recount, and upon receipt of such certificate the Returning Officer shall proceed to make his return. 37 V. c. 5, s. 20; 39 V. c. 10, s. 24; 40 V. c. 8, s. 74.

**126.** The Returning Officer shall at the same time transmit to the Clerk of the Crown in Chancery, enclosed in a box or other covering, sealed with the seal of the Returning Officer, all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, statements relating thereto, declarations of inability to read or mark, packets of counterfoils, and voters' lists, with documents annexed thereto, sent by the Deputy Returning Officers, endorsing on the packet a description of its contents, and the date of the election to which they relate, and also the name of the Electoral District for which such election was held; and the said return and the said packet, so directed as aforesaid to be transmitted to the Clerk of the Crown in Chancery, may be transmitted by express or through the post-office, the same being first duly registered. 37 V. c. 5, s. 20.

*Returning Officer to transmit to Clerk of the Crown in Chancery his return ballot papers, &c.*

**127.** The Returning Officer shall also, before transmitting his return to the Clerk of the Crown in Chancery, upon application, deliver to each of the candidates, or their agents, or if no application be made, shall, within the same period, transmit by mail to each candidate a duplicate of such return, which duplicate shall stand in lieu of an indenture. 37 V. c. 5, s. 21.

*Returning Officer to transmit duplicate of return to each candidate*

Clerk of Crown in Chancery (unless otherwise ordered) to destroy documents returned to him after one year.

**128.** The Clerk of the Crown in Chancery shall retain for the period of one year all documents relating to an election forwarded to him in pursuance of this Act by a Returning Officer, and then, unless otherwise directed by a rule or order of the Court of Appeal or a Judge thereof, or a Judge on the rota for the trial of election petitions, he shall destroy the same by fire. 39 V. c. 10, s. 26.

Returning Officer may be sued for neglecting to return any person duly elected.

Rev. Stat. c. 11.

**129.** If any Returning Officer wilfully delays, neglects or refuses duly to return any person who ought to be returned to serve in the Legislative Assembly for any Electoral District, such person may, in case it has been determined, on the hearing of an election petition under "*The Controverted Elections Act*," that such person was entitled to have been returned, sue the Returning Officer having so wilfully delayed, neglected, or refused duly to make such return of his election in any Court of Record in Ontario, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit, provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial relating to such election. 34 V. c. 3, s. 51.

#### PUBLICATION OF RETURN.

Notice of return in *Ontario Gazette*.

**130.** The Clerk of the Crown in Chancery shall, on receiving the return of any member elected to the Legislative Assembly, give in the next ordinary issue of the *Ontario Gazette*, notice of the receipt of the return, the date of his receiving the same, and the name of the candidate elected. 39 V. c. 10, s. 27.

#### INSPECTION OF DOCUMENTS.

Inspection of rejected ballot papers, &c.

**131.** No person shall be allowed to inspect any rejected ballot papers or ballot papers objected to under section one hundred and five of this Act in the custody of the Clerk of the Crown in Chancery, except under the rule or order of the Court of Appeal or a Judge thereof, or a Judge on the rota for the trial of election petitions; such rule or order to be granted by such Court or Judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made, subject to such conditions as to persons, time, place, and mode of inspection or production, as the Court or Judge making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. 37 V. c. 5, s. 23; 39 V. c. 10, s. 45.

Inspection of counterfoils and counted ballot papers.

**132.** No person shall, except by order of such Court or Judge as aforesaid, open the sealed packets of counterfoils, after the same have been once sealed up; and no person shall, except by



order of a tribunal having cognizance of petitions complaining of undue returns or undue elections, be allowed to inspect any counted ballot papers (other than ballot papers objected to under section one hundred and five of this Act) in the custody of the Clerk of the Crown in Chancery; and such orders may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the Court, Judge or tribunal, making the order may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery.

2. On making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted be not discovered until he has been proved to have voted, and his vote has been declared by a competent tribunal to be invalid. 37 V. c. 5, s. 24; 39 V. c. 10, s. 45.

**133.** All documents forwarded by a Returning Officer, in pursuance of this Act, to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection, at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery with the consent of the Speaker of the Legislative Assembly; and the Clerk of the Crown in Chancery shall supply copies of or extracts from the said documents to any person demanding the same, on payment for the same at the rate of ten cents for each folio of one hundred words, and in computing the number of words in such copy or extract every figure shall be counted as a word. 37 V. c. 5, s. 25.

Inspection of certain documents with the Clerk of the Crown in Chancery.

**134.** Where a rule or order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production of the document by such Clerk or his agent, in such manner as may be directed by the rule or order, shall be conclusive evidence that such document relates to the specified election: and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown in Chancery or his agent, shall be evidence of such papers being what they are stated to be by the endorsement: and the production, from proper custody, of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number, and having a number marked thereon in writing, shall be deemed *prima facie* evidence that the person who voted by such ballot paper was the person who, at the time of such election, had prefixed to his name in the voters' list used for the polling subdivision in which he voted at such election, the same number as that written on such counterfoil: or in the case of tendered ballot papers marked in the manner hereinbefore provided by persons not named in the voters' list, the production, from the proper custody, of any such ballot paper, purporting to have been used at any election, and of a counterfoil, marked with the same printed number, and having a name written thereon (other than the name of the Deputy Returning

Evidence as to documents, ballot papers, &c., in certain cases

Officer), shall be deemed *prima facie* evidence that the person who voted by such ballot paper was the person whose name was so written as aforesaid on such counterfoil. 37 V. c. 5, s. 26.

#### KEEPING THE PEACE AND GOOD ORDER AT ELECTIONS.

Returning Officer and his Deputies to be conservators of the peace;

**135.** From the time when any Returning Officer or Deputy Returning Officer has taken and subscribed the oath of office as such, until the day next after the final closing of the polls at such election, such Returning Officer or Deputy Returning Officer, respectively, shall be a conservator of the peace, and invested, for the maintenance of the peace, for the arrest, detention or admission to bail, trial and conviction of any person or persons who break the law or trouble the peace, with the same powers with which Justices of the Peace are invested in this Province. 32 V. c. 21, s. 57.

may require the aid of Justices of the Peace, etc.,

**136.** For the maintenance of the peace and of good order at such election, each such Returning Officer or Deputy Returning Officer respectively, may require the assistance of all Justices of the Peace, constables, and other persons present at the election, whether at the place of holding the election, or at any polling place, to aid him in so doing, and may also swear in as many special constables as he deems necessary. 32 V. c. 21, s. 57 (2).

and may swear in special constables.

Special constables to be sworn in certain cases.

**137.** On a requisition in writing made by a candidate or by his agent, or by any two or more electors, any Returning Officer or Deputy Returning Officer shall swear in such special constables. 32 V. c. 21, s. 58.

R. O. or D.R. O. may arrest disturbers, or order them to be imprisoned for a certain time.

**138.** Each such Returning Officer or Deputy Returning Officer, respectively, may arrest or cause to be arrested by verbal order, and may place in the custody of one or more constables or other persons, for such time as in his discretion he deems expedient, any person disturbing the peace and good order, or may cause such person to be imprisoned for any such offence, under an order signed by him, for any period not later than the final closing of the election or of the poll, respectively; which order all persons shall obey without delay, under a penalty of twenty dollars for any refusal or neglect so to do. 32 V. c. 21, s. 57 (3).

Penalty.

Such arrest not to prevent other punishment.

**139.** No such arrest, detention or imprisonment shall in any manner exempt the person so arrested, detained, confined or imprisoned, from any pains or penalty to which he has become liable by reason of anything by him done contrary to the true intent and meaning of this Act or otherwise. 32 V. c. 21, s. 57 (4).

Returning Officer or Deputy may demand sur-

**140.** Any Returning Officer or Deputy Returning Officer may, during any part of the day whereon an election is to be begun, holden or proceeded with, or on which any poll

for such election is to be begun, holden or proceeded with, demand and receive from any person whomsoever, any offensive weapon, such as firearms, swords, staves, bludgeons or the like, with which any such person is armed, or which any such person has in his hands or personal possession; and every such person who upon such demand declines or refuses to deliver up, to such Returning Officer or Deputy Returning Officer, any such offensive weapon as aforesaid, shall incur a penalty of twenty dollars. 32 V. c. 21, s. 59.

reader of all  
weapons.

**141.** Every person convicted of a battery committed during any part of the days whereon an election, or any poll for an election, is to be begun, holden or proceeded with, within the distance of two miles of the place where the election or poll is so begun, holden or proceeded with, shall incur a penalty of fifty dollars. 32 V. c. 21, s. 60.

Penalty on  
persons con-  
victed of bat-  
tery.

**142.** Except the Returning Officer or his Deputy, or the Poll Clerk, or one of the constables or special constables appointed by such Returning Officer or his Deputy for the orderly conduct of such election or poll, and the preservation of the public peace thereat, no person who has not had a stated residence in the Township or Union of Townships, or ward, or subdivision, for at least six months next before the day of such election, shall come during any part of the day upon which such poll is to remain open, into such Township or Union of Townships, ward, or subdivision, armed with offensive weapons of any kind, as fire-arms, swords, staves, bludgeons, or the like; nor shall any person whomsoever being in such Township, union of Townships, ward, or subdivision, arm himself, during any part of such day, with such offensive weapons, and thus armed approach within the distance of two miles of the place where the poll for such subdivision is held, unless called upon to do so by lawful authority. 32 V. c. 21, s. 62.

With certain  
exceptions,  
stranger to no  
come armed  
into any  
township, &c.,  
while the poll  
is open;

nor armed per-  
son to ap-  
proach within  
two miles of  
the poll.

**143.** No candidate for the representation of any Electoral District, or any other person, shall furnish or supply any ensign, standard, or set of colours, or any other flag, to or for any person or persons whomsoever, with intent that the same should be carried or used in such Electoral District on the day of election, or within eight days before such day, or during the continuance of such election or polling, by such person or any other, as a party flag, to distinguish the bearer thereof and those who might follow the same, as the supporters of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate; nor shall any person for any reason carry or use any such ensign, standard, set of colours, or other flag, as a party flag, within such Electoral District on the day of any such election or polling, or within eight days before such day, or during the continuance of such election. 32 V. c. 21, s. 63.

Party ensigns,  
flags, etc., not  
to be carried  
during the  
election or  
within eight  
days before it.



Party badges,  
etc., not to be  
used during  
like time.

**144.** No candidate for the representation of any Electoral District, or any other person, shall furnish or supply any ribbon, label, or the like favour, to or for any person whomsoever, with intent that the same should be worn or used within such Electoral District on the day of election or polling, or within eight days before such day, or during the continuance of such election, by such person or any other as a party badge to distinguish the wearer as the supporter of such candidate, or of the political or other opinions entertained, or supposed to be entertained, by such candidate; nor shall any person use or wear any ribbon, label, or other favour, as such badge, within such Electoral District, on the day of any such election or polling, or within eight days before such day, or during the continuance of such election. 32 V. c. 21, s. 64.

Penalty.

**145.** Every person offending against any of the provisions of the three next preceding sections, shall incur a penalty of one hundred dollars. 32 V. c. 21, s. 65.

#### MAINTAINING SECRECY OF PROCEEDINGS.

Maintaining  
secrecy of  
proceedings.

**146.** Every officer, clerk and agent in attendance at a polling place shall maintain and aid in maintaining the secrecy of the voting at the polling place; and shall not communicate before the poll is closed to any person any information as to the number on the voters' list of any person who has or who has not applied for a ballot paper or voted at that polling place.

2. No officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling place information as to the candidate for whom any voter at such polling place is about to vote or has voted.

3. No officer, clerk, agent or other person shall communicate at any time to any person any information obtained at a polling place as to the candidate for whom any voter at such polling place is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at the polling place, or upon the counterfoil which was attached to such ballot paper, or as to the number prefixed to the name of such voter in the voters' list.

4. Every officer, clerk and agent in attendance at the counting of the votes, shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting, the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper.

5. No person shall, directly or indirectly, induce any voter

to display his ballot paper after he has marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

6. Every person who acts in contravention of this section, shall be liable, on summary conviction before a Stipendiary Magistrate, Police Magistrate, or two Justices of the Peace, to imprisonment for any term not exceeding six months, with or without hard labour. 37 V. c. 5, s. 30. Penalty for contravening this section.

147. Every Returning Officer and every officer, clerk and agent authorized to attend at a polling place, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the Returning Officer, of a Justice of the Peace, and, if he is any other officer, or a clerk or an agent, in the presence of a Justice of the Peace, the Returning Officer or a Deputy Returning Officer, and such statutory declaration of secrecy shall be according to Form 28 in Schedule A to this Act, or to the like effect. 37 V. c. 5, s. 31; 39 V. c. 10, s. 18. Statutory declaration of secrecy.

148. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted. 37 V. c. 5, s. 32. No one compellable to disclose his vote.

#### PREVENTION AND PUNISHMENT OF CORRUPT PRACTICES AND OTHER ILLEGAL ACTS AT ELECTIONS.

149. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly :— Certain acts to be bribery.

(a.) Every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises any money or valuable consideration, or promises or endeavours to procure any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any person, in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid, on account of such voter having voted or refrained from voting at any such election. (Giving money, etc., to voters.

(b.) Every person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises, any office, place or employment, or promises to procure, or to endeavour to procure any office, place or employment to or for any voter or to or for any other person, in order to induce such voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election; Procuring office, etc., for voters.

(c.) Every person who directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, or for persons influencing voters.



offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in the Legislative Assembly, or the vote of any voter at any election ;

Corruptly influencing voters.

(d.) Every person who upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure the return of any person to serve in the Legislative Assembly or the vote of any voter at any election ;

Advancing or paying money for bribery.

(e.) Every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election ;

Penalty.

Proviso.

2. Any person so offending shall incur a penalty of two hundred dollars : but the actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act. 32 V. c. 21, s. 67.

Certain acts by voters to be bribery.

**150.** The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :—

Contracting to vote for money, etc.

(a.) Every voter who, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election ;

Receiving money to vote.

(b.) Every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting at any election.

Penalty.

2. Any person so offending shall incur a penalty of two hundred dollars. 32 V. c. 21, s. 68.

Furnishing entertainment forbidden, except at residence of the person furnishing.

**151.** No candidate for the representation of any Electoral District shall, nor shall any other person, either provide or furnish drink or other entertainment at the expense of such candidate or other person, to any meeting of electors assembled for the purpose of promoting such election, previous to or dur-

ing such election, or pay or promise or engage to pay for any such drink or other entertainment, except only that nothing herein contained shall extend to any entertainment furnished to any such meeting of electors by or at the expense of any person or persons at his, her, or their usual place of residence. 36 V. c. 2, s. 2.

2. Every person offending against the provisions of this section shall incur a penalty of one hundred dollars. 32 V. c. 21, s. 65.

**152.** No candidate shall corruptly, by himself or by or with any person, or by any other way or means on his behalf, at any time either before or during an election, directly or indirectly give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay wholly or in part any expenses incurred for any meat, drink, refreshment or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give, or refrain from giving, his vote at such election: And every person so acting shall be deemed guilty of corrupt practice, and shall forfeit, to any person who sues for the same, the sum of two hundred dollars, with full costs of suit, in addition to any other penalty to which he may be liable therefor. 39 V. c. 10, s. 1.

Candidate not corruptly to provide refreshment.

Penalty.

**153.** The giving or causing to be given to any voter on the nomination day or day of polling, on account of such voter being about to vote or having voted, any meat, drink or refreshment, or any money or ticket to enable such voter to procure refreshment, shall be deemed a corrupt practice, and the person offending shall also forfeit, to any person suing for the same, the sum of ten dollars for each offence, with full costs of suit. 39 V. c. 10, s. 2.

Giving meat or drink to electors,

Penalty.

**154.** And whereas doubts may arise as to whether the hiring of teams and vehicles to convey electors to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law, it is declared and enacted, that the hiring or promising to pay or paying for any horse, team, carriage, cab or other vehicle, by any candidate, or by any person on his behalf, to convey voters to or near or from the poll, or from the neighbourhood thereof, at any election, or the payment by any candidate, or by any person on his behalf, of the travelling and other expenses of any voter in going to or returning from any election, shall be illegal acts; and the person so offending shall thereby incur a penalty of one hundred dollars; and any elector who hires any horse, cab, cart, wagon, sleigh, carriage or other conveyance for any candidate, or for any agent of a candidate, for the purpose of conveying electors to or from the polling place or places, shall *ipso facto* be disqualified from voting at such election, and for every such

Hiring of vehicles by candidates to convey electors illegal.

Penalty.

Penalty for electors so doing.

offence shall incur a penalty of one hundred dollars. 32 V. c. 21, s. 71.

Persons guilty  
of undue in-  
fluence.

**155.** Every person who, directly or indirectly, by himself or any other person on his behalf, makes use of, or threatens to make use of, any force, violence or restraint, or inflicts, or threatens the infliction by himself, or by or through any other person, of any injury, damage, harm or loss, or in any manner practices intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who, by abduction, duress, or any fraudulent device or contrivance, impedes, prevents, or otherwise interferes with, the free exercise of the franchise of any voter, or thereby compels, induces, or prevails upon any voter, either to give or refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall incur a penalty of two hundred dollars. 32 V. c. 21, s. 72.

Penalty.

Penalty for  
false per-  
sonation.

**156.** If, at an election any person knowingly personates and falsely assumes to vote in the name of another person whose name appears on the proper list of voters, whether such other person be then living or dead, or if the name of the said other person be the name of a fictitious person, every such person shall incur a penalty of two hundred dollars. 32 V. c. 21, s. 46.

No strong  
drink to be  
sold on polling  
day.

**157.** No spirituous or fermented liquor or strong drink shall be sold or given at any hotel, tavern, shop or other place within the limits of a polling subdivision, during the polling day therein or any part thereof, under penalty of one hundred dollars for every offence; and the offender shall be subject to imprisonment not exceeding six months at the discretion of the Judge or Court, in default of payment of such fine. 39 V. c. 10, s. 3.

Penalty.

#### DISQUALIFICATION FOR CORRUPT PRACTICES.

Corrupt prac-  
tices by candi-  
date or his  
agent to avoid  
election.

**158.** Where it is found upon the report of a Judge upon an election petition that any corrupt practice has been committed by any candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall, except in the cases mentioned in section one hundred and fifty-nine, be void. 36 V. c. 2, s. 3 (1).

Corrupt prac-  
tices by agents  
without know-  
ledge of can-  
didate not  
necessarily to  
avoid election.

**159.** To prevent the expense and trouble of new elections when unnecessary and useless; in case of a corrupt act or acts being committed by an agent without the knowledge and consent of the candidate, if the corrupt act or acts was or were of such trifling nature, or was or were of such trifling extent, that the result cannot have been affected, or be reasonably supposed to have been affected, by such act or acts, either alone or in connection with other illegal practices at the election, such corrupt act or acts shall not avoid the election. 39 V. c. 10, s. 37.



**160.** If, on the trial of an election petition, it is proved that a corrupt practice has been committed by an agent of a candidate, but (by reason of any provision in this Act contained) the election is not declared void, or the candidate is not unseated, the petitioner and respondent respectively shall nevertheless be entitled, each against the other, to such costs of the proceedings as before the tenth day of February, 1876, they would have been entitled to receive on establishing such corrupt practice on an election trial. 39 V. c. 10, s. 38.

Costs in such cases.

**161.** When it is found by the report of the Judges upon an election petition that any corrupt practice has been committed, by or with the actual knowledge or consent of any candidate at an election, in addition to his election, if he has been elected, being void, he shall, during the eight years next after the date of his being so found guilty, be incapable of being elected to and of sitting in the Legislative Assembly, and of being entered in any voters' list as a voter and of voting at any election, and of holding any office, at the nomination of the Crown or of the Lieutenant-Governor, in Ontario, or any municipal office. 36 V. c. 2, s. 3 (2).

Candidate guilty of corrupt practice incapable for eight years of being elected, etc.

**162.** If it appears to the Court or the Judges trying an election petition, that an act constituting in law a corrupt practice was committed by a candidate, or with his knowledge and consent, but without any corrupt intent, and in an ignorance which was involuntary and excusable, and that the evidence showed the candidate to have honestly desired, and in good faith endeavoured as far as he could, to have the election conducted according to law, the candidate shall not be subject to the penalties and disabilities which he would but for this section incur under the next preceding section. 39 V. c. 10, s. 35.

Corrupt practice committed in excusable ignorance not necessarily to avoid election or disqualify candidate.

**163.** If on the trial of any election petition, it is proved that any elector voting at the election was bribed, he shall be disqualified from voting at the next general election; and if it is proved that any corrupt practice has been committed by any elector voting at the election, his vote shall be null and void. 32 V. c. 21, s. 70; 34 V. c. 3, s. 47.

Vote by elector committing any corrupt practice void.

**164.** Any person other than a candidate found guilty of any corrupt practice in any proceeding in which, after notice of the charge, he has had an opportunity of being heard, shall, during the eight years next after the time at which he is so found guilty, be incapable of being elected to and of sitting in the Legislative Assembly, and of being registered as a voter, and of voting at any election, and of holding any office at the nomination of the Crown, or of the Lieutenant-Governor in Ontario, or any municipal office. 34 V. c. 3, s. 49.

Punishment of persons found guilty of any corrupt practice.

2. No person other than a candidate shall be subject to the disabilities set forth in the preceding sub-section, (1) by

A merely technical or

unintentional  
contravention  
of s. 164, not to  
subject to  
penalties, &c.

reason of a merely technical breach of law, or (2) by reason of any act not being an intentional violation of law, and not involving moral culpability or affecting the result of the election. 39 V. c. 10. s. 39.

Election of  
candidate to be  
void for em-  
ploying agent  
previously  
found guilty of  
corrupt prac-  
tice.

**165.** If on the trial of any election petition, any candidate is proved to have personally engaged at the election to which such petition relates, as a canvasser or agent in relation to the election, any person, knowing that such person has, within eight years previous to such engagement, been found guilty of any corrupt practice by any competent legal tribunal, or by the report of the Judges upon an election petition, the election of such candidate shall be void. 34 V. c. 3, s. 48.

Doubts under  
Acts removed.

**166.** To remove doubts as to the effect, upon subsequent election, of the avoidance of a prior election, held for the same Electoral District for the same Legislative Assembly, it is hereby enacted, that such subsequent election shall be deemed and taken, as respects both candidates and voters, to be a new election, in law and in fact, to all intents and purposes, except as to the personal acts of the candidates and the acts of agents of candidates done with the knowledge and consent of such candidates. 39 V. c. 10, s. 36.

Effect of avoid-  
ance of a prior  
election.

Removal of  
disqualifica-  
tion on proof  
that disquali-  
fication was  
procured by  
perjury.

**167.** If, at any time after any person has become disqualified by virtue of this Act, the witnesses or any of them on whose testimony such person has so become disqualified, are, upon the prosecution of such person, convicted of perjury in respect of such testimony, it shall be lawful for such person to move the Court of Appeal to order, and the Court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall therefore cease and determine, and the same shall cease and determine accordingly. 34 V. c. 3, s. 50.

Penalty for  
voting when  
under dis-  
qualification.

**168.** Any person wilfully voting at any such election, without having, at the time of his so voting, all the qualifications required by law for entitling him so to vote, shall, for so doing, incur a penalty of two hundred dollars, and his vote shall, moreover, be null and void; and in any action or prosecution instituted as hereinafter provided against any such person for the recovery of the said penalty, the burden of the proof of, such person having, at the time of his so voting at such election, all the said qualifications, shall fall upon him and not upon the party instituting such action or prosecution. 32 V. c. 21 s. 47. *first part.*

Proof of the  
qualification  
to be on the  
person voting.

Penalty for  
voting more  
than once.

**169.** Any person who votes more than once at the same election shall, for so doing, incur a like penalty of two hundred dollars, and every vote he gives subsequently to his first vote shall be null and void. 32 V. c. 21, s. 47, *last part.*



**170.** No person shall make, execute, accept or become a party to any lease, deed, or other instrument, or become a party to any verbal arrangement, whereby a colourable interest in any land, house or tenement is conferred, in order to qualify any person to vote at an election; and any person violating the provisions of this section, besides being liable to any other penalty prescribed in that behalf, shall incur a penalty of one hundred dollars; and any person who induces, or attempts to induce, another to commit an offence under this section, shall incur a like penalty. 39 V. c. 11, s. 26. *See also Rev. Stat., c. 9, s. 27.*

Colourable transfer of property in order to confer vote.

**171.** If any lands or tenements are transferred or conveyed to any person, by any title or instrument whatever, fraudulently, and for the purpose of giving him the qualification requisite to enable him to vote, and if such person votes at any election, upon such lands or tenements, he shall incur a penalty of two hundred dollars; and nevertheless such transfer or conveyance, notwithstanding any agreement to annul or revoke the same, or to reconvey such lands or tenements, shall be valid, as between the parties thereto; and every such agreement to annul or revoke any such transfer or conveyance, or to reconvey such lands or tenements, shall be null and void. 32 V. c. 21, s. 48.

Penalty for fraudulent conveyances in order to give a vote.

Such conveyances to be valid between the parties.

**172.** Every executory contract or promise or undertaking, in any way referring to, arising out of, or depending upon, any election under this Act, even for the payment of lawful expenses, or the doing of some lawful act, shall be void in law; but this provision shall not enable any person to recover back any money paid for lawful expenses connected with such election. 32 V. c. 21, s. 74.

Contracts arising out of elections to be void.

**173.** No pecuniary penalty or forfeiture imposed by any Act of the Legislature of Ontario, shall be recoverable for any act of bribery or corrupt practice at an election, in case it appears that the person charged and another person or other persons were together guilty of the act charged, either as giver and receiver, or as accomplices or otherwise, and that the person charged has previously *bona fide* prosecuted such other person or persons or any of them for the said act; but this provision shall not apply in case the Judge, before whom the person claiming the benefit thereof is charged, certifies that it clearly appears to him that the person so charged took the first step towards the commission of the offence charged, and that such person was in fact the principal offender. 37 V. c. 7, s. 95.

No statutory penalty for corrupt practice at elections, where the party charged has first prosecuted a party jointly liable.

Proviso.

#### *Court for Trial of Illegal Acts.*

**174.** Any two of the Judges appointed for the trial of election petitions shall be and constitute a Court for the trial of all corrupt practices and other illegal acts committed during an election, being offences in respect of which this Province has legislative authority. 39 V. c. 10, s. 42. (1.)

Court constituted for trial of illegal acts.

Procedure by  
summons

**175.** In case, in and by an affidavit filed at, before or after the trial of an election petition, or from the evidence at the trial, any person not a party to the petition is charged with or appears to have committed any corrupt practice, or other illegal act, the Court, Judges or Judge trying the petition may order such person to be summoned to appear at a time and place to be named in the summons. 39 V. c. 10, s. 42 (2).

Refusal to  
attend on  
summons.

2. In case the person so summoned neglects or refuses to attend in pursuance of such summons, then upon the proof being made of such person's having been duly summoned, the Judges may either issue their warrant to compel his appearance, or if he was personally served may pronounce judgment in his absence. 39 V. c. 10, s. 42 (2).

Service of  
summons.

3. Every summons issued under this section may be served by delivering a copy of the summons to the person summoned, or to some inmate of his usual place of abode. 39 V. c. 10, s. 42 (3).

Person  
charged to be  
allowed de-  
fence.

4. The person charged with committing the corrupt practice, or other illegal act, shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel. 39 V. c. 10, s. 42 (4).

If he appears.

5. If such person appears in obedience to such summons, and states that he has a defence to make, the Judges shall hear such defence, and investigate and dispose of the case in a summary manner, or may adjourn the hearing thereof as may be deemed advisable; and if it is proved, or the person admits, that he has committed any corrupt practice or other illegal act, the Judges shall order him to pay such fine or receive such punishment as the law assigns to his offence. 39 V. c. 10, s. 42 (5).

Powers, &c., of  
the Court.

6. The Judges shall have the same powers, jurisdiction and authority for such investigation as they have on the trial of an election petition. 39 V. c. 10, s. 42 (6).

*Persons not to be excused from giving evidence on ground of privilege or incrimination.*

Persons not  
excused from  
answering be-  
fore Court,  
etc., on the  
ground that  
answers may  
criminate.

**176.** No person shall be excused from answering any question put to him in any action, suit or any other proceeding in any Court, or before any Judge, touching or concerning any election, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will tend to criminate himself, shall be used in any proceeding against such person under any Act of the Legislature of On-

tario, if the Judge gives to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answers to the satisfaction of the Judge. 32 V. c. 21, s. 73.

#### OFFENCES AND PENALTIES.

**177.** If any Returning Officer, Deputy Returning Officer, or any other person whose duty it is to deliver copies or have the custody of any certified list of voters wilfully makes any alteration, omission or insertion, or in any way wilfully falsifies any such certified list or copy, every such person shall incur a penalty of two thousand dollars. 32 V. c. 21, s. 11, *in part*.

Returning Officers, etc., wilfully falsifying or altering list of voters to incur penalty.

**178.** No person shall

(a) Fraudulently deface or fraudulently destroy any ballot paper: Offences.

(b) Without due authority supply any ballot paper to any person; or

(c) Fraudulently put into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or

(d) Fraudulently take out of the polling place any ballot paper; or

(e) Without due authority destroy, take, open, or otherwise interfere with any ballot box or packet of ballot papers then in use for the purposes of the election;

2. No person shall attempt to commit any offence specified in this section; Attempt

3. Any person guilty of any violation of this section shall be liable, if he is a Returning Officer, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour. 37 V. c. c. 5, s. 27, Imprisonment

**179.** If any person unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully or maliciously destroyed, injured or obliterated, any writ of election, or any return to a writ of election, or any voters' list, certificate or affidavit, or any other document or paper made, prepared or drawn out according to or for the purpose of meeting the requirements of this Act or any of them, he shall incur a penalty of two thousand dollars. 32 V. c. 21, s. 75.

Persons unlawfully destroying, &c., documents relating to elections, &c.

2. Every person who aids, abets, counsels or procures the commission of any such violation of this Act, as in this section mentioned, shall incur a penalty of two thousand dollars. 32 V. c. 21, s. 76. Abettors punishable as principals.

Neglect of D.  
R. O. or Poll  
Clerk.

**180.** Any Deputy Returning Officer or Poll Clerk who refuses or neglects to perform any of the obligations or formalities required of him by this Act, shall, for each such refusal or neglect, incur a penalty of two hundred dollars. 32 V. c. 21, s. 50 ; 37 V. c. 5, s. 39 (6).

Money pen-  
alty for  
offences.

**181.** Every officer or clerk who is guilty of any wilful misfeasance, or any wilful act or omission in contravention of this Act, shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act or omission, a penal sum of four hundred dollars. 37 V. c. 5, s. 29.

Penalty.

How penalties  
under Act  
recoverable,  
and payment  
enforced.

**182.** Subject to the provisions of sections one hundred and seventy-four and one hundred and seventy-five,

1. All penalties imposed by this Act shall be recoverable with full costs of suit, by any person who will sue for the same by action of debt or information, in any of Her Majesty's Courts in this Province having competent jurisdiction ; and in default of payment of the amount which the offender is condemned to pay, within the period to be fixed by such Court, such offender shall be imprisoned in the common gaol of the place until he has paid the amount which he has been so condemned to pay and the costs. 32 V. c. 21, s. 77 ; 40 V. c. 7. *Sched. A* (3).

Statement in  
the declara-  
tion.

2. It shall be sufficient for the plaintiff, in any action or suit, given by this Act, to state in the declaration that the defendant is indebted to him in the sum of money thereby demanded, and to allege the particular offence for which the action or suit is brought, and that the defendant had acted contrary to this Act, without mentioning the writ of election or the return thereof. 32 V. c. 21, s. 77 (2).

Writ, &c.,  
need not be  
produced at  
trial.

3. It shall not be necessary on the trial of any suit or prosecution under this Act, to produce the writ of election or the return thereof, or the authority of the Returning Officer founded upon any such writ of election, but general evidence of such facts shall be sufficient evidence. 32 V. c. 21, s. 77 (3).

Limitation of  
suits.

4. Every action, suit or information given by this Act, shall be commenced within the space of one year next after the act committed, and not afterwards. 32 V. c. 21, s. 77 (4).

#### ELECTION EXPENSES OF CANDIDATES.

Payments,  
&c., by or on  
behalf of can-  
didates before,  
during, or after  
election, ex-  
cept through

**183.** No payment (except in respect of the personal expenses of a candidate), and no advance, loan or deposit for the purposes of the election, shall be made by or on behalf of any candidate at an election, before, or during, or after such election, otherwise than through an agent or agents whose name



and address, or names and addresses, has or have been declared in writing to the Returning Officer on or before the day of nomination; or through an agent or agents to be appointed in his or their place as herein provided; and no person shall make any such payment, advance, loan or deposit for the purposes of the election, otherwise than through such agent or agents. 36 V. c. 2, s. 7. *See Section 52.*

named agents, forbidden.

**184.** In event of the death or legal incapacity of any agent appointed in pursuance of the preceding section, the candidate shall forthwith appoint another agent in his place, by giving notice to the Returning Officer of the name and address of the person so appointed, which shall in like manner be forthwith published by the Returning Officer at the expense of the candidate. 36 V. c. 2, s. 9.

On death or incapacity of an agent, appointment of another.

**185.** All persons who have any bills, charges or claims upon any candidate for or in respect of any election, shall send in such bills, charges or claims, within one month from the day of the declaration of the election, to such agent or agents as aforesaid, otherwise such persons shall be barred of their right to recover such claims and every or any part thereof.

Claims on candidate in respect of any election, when to be sent in to agent.

2. In case of the death within the said month of any person claiming the amount of such bill, charge or claim, the legal representative of such person shall send in such bill, charge or claim, within one month after obtaining probate, or letters of administration, as the case may be, or the right to recover such claim shall be barred as aforesaid.

Case of death of person making claim.

3. Such bills, charges and claims shall be sent in and delivered to the candidate, if, and so long as, during the said month, there is, owing to death or legal incapacity, no such agent.

Case of death of agent.

4. The agent shall not pay or allow any bill, charge or claim without the authority of the candidate, as well as the approval of the agent. 36 V. c. 2, s. 10.

Agent not to pay without authority of candidate.

**186** A detailed statement of all election expenses incurred by or on behalf of any candidate, including payments in respect of his personal expenses, shall, within two months after the election (or in cases where, by reason of the death of the creditor, no bill has been sent in within such period of two months, then within one month after such bill has been sent in), be made out and signed by the agent, or, if there be more than one, by every agent who has paid the same (including the candidate in case of payments made by him), and delivered, with the bills and vouchers relative thereto, to the Returning Officer; and the Returning Officer for the time being shall, at the expense of the candidate, within fourteen days, insert or cause to be inserted an abstract of such statement, with the signature of the agent

A detailed statement of election expenses, etc., to be signed and sent by agent to Returning Officer, who shall publish same.



Penalty. thereto, in some newspaper published or circulating in the Electoral District where the election was held : and any agent or candidate who makes default in delivering to the Returning Officer the statement required by this section, shall incur a penalty not exceeding twenty-five dollars for every day during which he so makes default; and no agent or candidate shall wilfully furnish to the said Returning Officer an untrue statement. 36 V. c. 2, s. 11.

Returning Officer to preserve bills, &c. and allow inspection.

**187.** The said Returning Officer shall preserve all such bills and vouchers, and shall during six months after they have been delivered to him permit any voter to inspect the same on payment of a fee of twenty-five cents. 36 V. c. 2, s. 12.

#### FEES AND EXPENSES OF RETURNING OFFICERS, &C.

Fees for services, etc.

**188.** The fees in Schedule B to this Act mentioned, and no others, shall be allowed to the several officers therein mentioned respectively, for their services and disbursements at any election. 32 V. c. 21, s. 78 (1-21); 39 V. c. 11, s. 23.

Expenses incurred by officers to be refunded.

**189.** The said fees, allowances and disbursements, together with the reasonable expenses incurred by the Returning Officer, and by the other officers and clerks, for printing, providing polling compartments, transmission of the packets required by this Act to be transmitted, and reasonable fees and allowances for other services rendered under this Act, shall be paid over to the Returning Officer, by warrant of the Lieutenant-Governor, directed to the Treasurer of the Province, out of the Consolidated Revenue Fund of the Province, and shall be distributed by such Returning Officer to the several officers and persons entitled to the same under the provisions of this Act, which distribution he shall report to the Lieutenant-Governor through the Provincial Secretary. 32 V. c. 21, s. 78 (22); 37 V. c. 5, s. 36.

Algoma and Muskoka and Parry Sound,

**190.** The Lieutenant-Governor may direct the payment to the Returning Officers of the Electoral District of Algoma and of Muskoka and Parry Sound, out of the Consolidated Revenue Fund, of such sums (over and above the allowance authorized by the preceding sections of this Act), as may be required to pay the expenses reasonably incurred by the said Returning Officers, and by the other officers and clerks, in conducting the election, and reasonable fees and allowances for any extraordinary services rendered by them thereat. 38 V. c. 3, s. 25.

#### MISCELLANEOUS PROVISIONS.

Property in ballot boxes, papers, &c., to be in Her Majesty.

**191.** The property in the ballot boxes, ballot papers, counterfoils, and marking instruments procured for or used at an election, shall be in Her Majesty. 37 V. c. 5, s. 28.

**192.** No person who, by the fourth section of this Act, is disqualified and incompetent to vote, shall act as agent for any candidate at any election; and any person violating this enactment shall be subject to the same penalty as if he had voted at the said election. 36 V. c. 2, s. 5.

Certain persons disqualified from acting as agents.  
Penalty.

**193.** A candidate may himself undertake the duties which any agent of his, if appointed, might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may in pursuance of this Act be authorized to attend. 37 V. c. 5, s. 33.

Candidates may undertake duties of agent.

**194.** At any election, whether on the day of the opening, or at the polling places opened and kept for such election, in the absence of any person authorized in writing to act as agent for any absent candidate, any elector in the interest of such candidate may, at any time during the election, declare himself to be and may act as the agent of any such candidate without producing any special authority in writing for that purpose. 32 V. c. 21, s. 24.

Elector may act as agent of candidate.

**195.** Where in this Act any expressions are used, requiring or authorizing any act or thing to be done, or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorized to attend, and as have in fact attended at the time and place where such act or thing is being done; and the non-attendance of any agent or agents at such time and place shall not, if the act or thing be otherwise duly done, invalidate in anywise the act or thing done. 37 V. c. 5, s. 34.

Expressions in the Act referring to agents.

Non-attendance of agents.

**196.** In reckoning time for the purposes of this Act, Sunday and any day set apart by any Act of lawful authority for a public holiday, fast or thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on such days, such thing may be done on the next juridical day. 37 V. c. 5, s. 35.

Non-juridical days.

**197.** No election shall be declared invalid by reason of a failure to hold a poll at any place appointed for holding a poll, or by reason of a non-compliance with the rules contained in this Act as to the taking of the poll or the counting of the votes, or by reason of any mistake in the use of the forms contained in the Schedules to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such failure, non-compliance or mistake did not affect the result of the election. 37 V. c. 5, s. 37; 38 V. c. 3, s. 18.

Election not to be void from failure to hold poll at place appointed, or for want of compliance with rules of election in compliance with principles of the Act, and the result not affected.

**198.** Any person applying for a ballot paper under this Act shall be deemed to tender his vote, or to offer or assume to

What shall be deemed a ten-

der of a vote,  
and a voting.

vote; and any person shall be deemed to have voted who has put his ballot paper into the ballot box, or has caused the same to be put into the ballot box, or has delivered the same to the Deputy Returning Officer or Poll Clerk, for the purpose of having the same placed in the ballot box. 37 V. c. 5, s. 38, *last part*.

Administra-  
tion of oaths,  
&c.

**199.** The Returning Officer shall have power to administer any of the oaths, affirmations, or take any of the declarations required with respect to the election; and any Deputy Returning Officer may administer such oaths, affirmations, or take any such declarations, except in cases where they are required to be administered to the Returning Officer. 39 V. c. 10, s. 18.

No charge for  
oaths, &c.

**200.** Any person before whom it is hereby required that any oath be taken, or any affirmation made in the manner herein provided, shall administer such oath or affirmation gratuitously. 32 V. c. 21, s. 79.

Transmission  
to Returning  
Officers of  
copies of this  
Act.

**201.** There shall be transmitted to each Returning Officer with the writ of election, such a number of copies of this Act as will be sufficient to supply such Returning Officer and each of his Deputies at the election with one copy at least; and each copy shall be accompanied with a copious alphabetical index. 32 V. c. 21, s. 80; 37 V. c. 5, s. 40.

---

## SCHEDULE A.

### FORM 1.

(Referred to in Section 32.)

PROCLAMATION OF THE RETURNING OFFICER DECLARING THE TIME AND PLACE FIXED FOR THE OPENING OF THE ELECTION, AND ALSO THE DAY FOR OPENING THE POLL.

---

#### PROCLAMATION.

County (Riding, City, Town, or other Electoral District, as the case may be) of \_\_\_\_\_, to wit:

Public Notice is hereby given to the Electors of the County (or as the case may be) of \_\_\_\_\_ that in obedience to Her Majesty's Writ to me directed, and bearing date the \_\_\_\_\_ day of the month of \_\_\_\_\_, I require the presence of the said Electors at \_\_\_\_\_, in the County (or Township, or City or Town) of \_\_\_\_\_ (here describe the place distinctly, whether the election be for a County, or for any other Electoral District) on the day of the month of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the noon, for the purpose of electing a person (or persons, as the case may be)

to represent them in the Legislative Assembly of this Province; and that in case a poll be demanded and allowed in the manner by law prescribed, such poll will be opened on the \_\_\_\_\_ day of the month of \_\_\_\_\_,

in the year \_\_\_\_\_, in each of the Townships, Wards, or Polling Subdivisions in which a polling place is to be opened and kept according to law, of which due notice will be given on the Day of Nomination. Of all which every person is hereby required to take notice, and to govern himself accordingly.

Given under my hand at \_\_\_\_\_, this \_\_\_\_\_ day of the month of \_\_\_\_\_, in the year 18 \_\_\_\_\_.

(Signature) A. B.,  
Returning Officer.

32 V. c. 21, *Sch. 1.*

---

### FORM 2.

(Referred to in Section 42.)

#### OATH OF THE RETURNING OFFICER.

I, the undersigned A. B., Returning Officer for the County or Riding (or as the case may be) of \_\_\_\_\_, solemnly swear (or if he be one of the persons permitted by law to affirm in civil cases, solemnly affirm) that I am legally qualified according to law to act as Returning Officer for the said County (or Riding, or as the case may be) of \_\_\_\_\_ and that I will act faithfully in that capacity, without partiality, fear, favour or affection : So help me God.

(Signature) A. B.,  
Returning Officer.

32 V. c. 21, *Sch. 2.*

---

### FORM 3.

(Referred to in Section 42.)

#### CERTIFICATE OF THE RETURNING OFFICER HAVING TAKEN THE OATH OF OFFICE.

I, the undersigned, hereby certify that on the \_\_\_\_\_ day of the month of \_\_\_\_\_, 18 \_\_\_\_\_, A. B., the Returning Officer for the County (or as the case may be) of \_\_\_\_\_, took and subscribed before me the oath (or affirmation) of office in such case required of a Returning Officer by the forty-second section of "*The Election Act of Ontario.*"

In testimony whereof, I have delivered to him this Certificate.

(Signature) C. D.,  
Justice of the Peace.

32 V. c. 21, *Sch. 3.*

---

### FORM 4.

(Referred to in Section 43.)

#### COMMISSION OF AN ELECTION CLERK.

To E. F. (*Set forth his legal addition and residence.*)

Know you, that in my capacity of Returning Officer for the County (or as the case may be) of \_\_\_\_\_, I have appointed and do hereby appoint you to be my Election Clerk, to act in that capacity ac-

cording to law at the approaching election for the said County (*or as the case may be*) of \_\_\_\_\_, which election will be opened by me on the \_\_\_\_\_ day of the month of \_\_\_\_\_, 18\_\_\_\_.

Given under my hand this \_\_\_\_\_ day of the month of \_\_\_\_\_, in the year 18\_\_\_\_.

(Signature) \_\_\_\_\_ A. B.,  
Returning Officer.

32 V. c. 21, *Sch.* 4.

### FORM 5.

(*Referred to in Section 44.*)

#### OATH OF THE ELECTION CLERK.

I, the undersigned E. F., appointed Election Clerk for the County (*or as the case may be*) of \_\_\_\_\_, solemnly swear (*or, if he be one of the persons permitted by law to affirm, solemnly affirm*) that I will act faithfully in my said capacity of Election Clerk, and also in that of Returning Officer, if required to act as such, according to law, without partiality, fear, favour or affection : So help me God.

(Signature) \_\_\_\_\_ E. F.,  
Election Clerk.

32 V. c. 21, *Sch.* 5.

### FORM 6.

(*Referred to in Section 44.*)

#### CERTIFICATE OF THE ELECTION CLERK HAVING TAKEN THE OATH OF OFFICE.

I, the undersigned, hereby certify that on the \_\_\_\_\_ day of the month of \_\_\_\_\_, 18\_\_\_\_, E. F., Election Clerk for the County (*or as the case may be*) of \_\_\_\_\_, took and subscribed before me the oath (*or affirmation*) of office required in such case of an Election Clerk by the forty-fourth section of "*The Election Act of Ontario.*"

In testimony whereof, I have delivered to him this Certificate under my hand.

(Signature) \_\_\_\_\_ C. D.,  
Justice of the Peace.  
or A. B.,  
Returning Officer.

32 V. c. 21, *Sch.* 6.

### FORM 7.

(*Referred to in Section 48.*)

#### PROCLAMATION WHICH THE RETURNING OFFICER IS TO CAUSE TO BE READ AT THE HUSTINGS, ON THE DAY OF THE OPENING OF THE ELECTION.

OYEZ. OYEZ. OYEZ.

All persons are commanded and strictly enjoined to keep silence while Her Majesty's Writ for the present Election is publicly read, under the pains and penalties in such case provided.

32 V. c. 21, *Sch.* 7.



## FORM 8.

*(Referred to in Sections 56 and 79.)*

FORM IN WHICH THE VOTERS' LIST TO BE FURNISHED TO DEPUTY RETURNING OFFICERS IS TO BE PREPARED.

NAMES OF THE VOTERS.	Description of Property in respect of which Voter is entitled to vote.	Owner, Tenant, Occupant or Farmer's Son.	Residence of Voter.	Objections.	Sworn or affirmed.	Refusal to swear or affirm.	Column for mark indicating that the Voter has voted.	REMARKS.
Number prefixed.								

NOTE.—The Numbers directed by section eighty of this Act to be prefixed by the Deputy Returning Officer to the names in the Voters' List are to be placed in the first column.

37 V. c. 5, Sch. K., 40 V. c. 10, s. 11.

## FORM 9.

(Referred to in Section 59.)

## COMMISSION OF DEPUTY RETURNING OFFICER.

To G. H. (*Insert his residence and legal addition.*)

Know you that, in my capacity of Returning Officer for the Electoral District of \_\_\_\_\_, I have appointed and do hereby appoint you to be Deputy Returning Officer for the \_\_\_\_\_ Polling Subdivision of the Township (*or as the case may be*) of \_\_\_\_\_ in the said Electoral District, there to take the votes of the electors according to law, at the polling place to be by you opened and kept for that purpose, and you are hereby authorized and required to open and hold the poll of such election for the said \_\_\_\_\_ Polling Subdivision of the said Township (*or as the case may be*) of \_\_\_\_\_ on the \_\_\_\_\_ day of

A.D. 18 \_\_\_\_\_, at nine o'clock in the forenoon, at (*here describe particularly the place in which the poll is to be held*), and there to keep the said poll open during the hours prescribed by law, and to do and perform in such polling place all acts and duties required to be performed by the Deputy Returning Officer appointed to act therefor, and to return to me on or before the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_, together with this commission, the several packets and documents required to be returned to me in the manner prescribed by sections one hundred and nine, one hundred and ten and one hundred and eleven of "*The Election Act of Ontario.*"

Given under my hand at the \_\_\_\_\_ of \_\_\_\_\_ in the County  
(*or as the case may be*) of \_\_\_\_\_ this \_\_\_\_\_ day of  
A.D. 18 \_\_\_\_\_.

(Signed) A. B.,  
Returning Officer.

37 V. c. 5, Sch. G.

## FORM 10.

(Referred to in Section 60.)

## OATH OF DEPUTY RETURNING OFFICER.

I, the undersigned G. H., appointed Deputy Returning Officer for the \_\_\_\_\_ Polling Subdivision of the Township (*or as the case may be*) of \_\_\_\_\_, in the County (*or as the case may be*) of \_\_\_\_\_, solemnly swear (*or, being one of the persons permitted by law to affirm in civil cases, solemnly affirm*) that I will act faithfully, in my said capacity of Deputy Returning Officer, without partiality, fear, favour or affection :  
So help me God.

(Signature) G. H.,  
Deputy Returning Officer.

32 V. c. 21, Sch. 9.

## FORM 11.

(Referred to in Section 60.)

## CERTIFICATE OF DEPUTY RETURNING OFFICER HAVING TAKEN THE OATH OF OFFICE.

I, the undersigned, hereby certify that on the \_\_\_\_\_ day of the  
month of \_\_\_\_\_, G. H., Deputy Returning Officer for the

Polling Subdivision of the Township (or as the case may be) of \_\_\_\_\_, in the County (or as the case may be) of \_\_\_\_\_, took and subscribed the oath (or affirmation) of office required in such case of a Deputy Returning Officer by the sixtieth section of "*The Election Act of Ontario*."

In testimony whereof I have delivered to him this Certificate under my hand.

(Signature) C. D.,  
Justice of the Peace.  
or A. B.,  
Returning Officer.


32 V. c. 21, Sch. 10.

FORM 12.

(Referred to in Section 64.)

FORM OF BALLOT PAPER.

(Front.)

Election for the County of _____, (or as the case may be)		1	DOE. (John Doe, Township of Southwold, County of Elgin, Yeoman.)
Counterfoil, No.		2	ROE. (Richard Roe, of Town of Goderich, County of Huron, Merchant.)
No. _____ on Voters' List.		3	STILES. (Geoffrey Stiles, of 52 Talbot Street, London, Physician.)
Note—The Counterfoil is to have a number to correspond with that on the back of the Ballot Paper.		4	STILES. (John Stiles, of 31 Grosvenor Street, Toronto, Barrister-at-Law.)

(Back.)

No. \_\_\_\_\_

Election for the County of \_\_\_\_\_  
(or as the case may be).  
18 \_\_\_\_\_

NOTE.—Nothing else is to be printed on the back of the Ballot Paper.

37 V. c. 5, Sch. A.

## FORM 13.

*(Referred to in Sections 69 and 97.)*

## DIRECTIONS FOR THE GUIDANCE OF VOTERS IN VOTING.

The voter is to vote for one candidate.

The voter is to go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of the candidate for whom he votes, thus X.



The voter is then to fold up the ballot paper so as to show the name or initials of the Deputy Returning Officer signed on the back, and leaving the compartment shall, without showing the front of the paper to any person, deliver such ballot so folded to the Deputy Returning Officer, and forthwith quit the polling place.

If the voter inadvertently spoils a ballot paper, he may return it to the Deputy Returning Officer, who will, if satisfied of such inadvertence, give him another ballot paper.

If the voter votes for more than one candidate, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the Deputy Returning Officer, he will be subject to imprisonment for any term not exceeding six months, with or without hard labour.

*In the following form of Ballot Paper given for illustration, the Candidates are JOHN DOE, RICHARD ROE, GEOFFREY STILES, and JOHN STILES, and the Elector has marked his ballot paper in favour of RICHARD ROE.*

	<b>1</b>	DOE. (John Doe, Township of Southwold, County of Elgin, Yeoman.)
	<b>2</b>	ROE. (Richard Roe, of Town of Goderich, County of Huron, Merchant.) 
	<b>3</b>	STILES. (Geoffrey Stiles, of 52 Talbot Street, London, Physician.)
	<b>4</b>	STILES. (John Stiles, of 31 Grosvenor Street, Toronto, Barrister-at-Law.)

FORM 14.

(Referred to in Section 71.)

CERTIFICATE OF CLERK AS TO DATES OF RETURN AND FINAL REVISION  
OF THE ASSESSMENT ROLL.

Election to the Legislative Assembly for the Electoral District of  
18

I, A. B., Clerk of the Municipality of , in the  
County of , do hereby certify that the Assessment  
Roll for this Township (or as the case may be), of  
upon which the Voters' List to be used at this election is based, was  
returned to me by the Assessor for said Township (or as the case may be),  
on the day of 18 ,  
and that the same was finally revised and corrected on the  
day of 18 .

Dated this day of 18 . A. B.,  
Clerk.

40 V. c. 10, Sch. B.

FORM 15.

(Referred to in Sections 81, 84 and 85.)

COMMISSION OF A POLL CLERK.

To I. J. (Insert his legal addition and residence.)

Know you, that in my capacity of Deputy Returning Officer for the  
Polling Subdivision of the Township (or as the case may be)  
of , in the County (or as the case may be) of  
I have appointed and do hereby appoint you to be  
Poll Clerk for the said Polling Subdivision of the said  
Township (or as the case may be) of  
Given under my hand, at this day of  
the month of , in the year 18 .  
(Signature.) G. H.  
Deputy Returning Officer.

32 V. c. 21, Sch. 11.

FORM 16.

(Referred to in Section 81.)

OATH OF A POLL CLERK.

I, the undersigned, I. J., appointed Poll Clerk for the Poll-  
ing Subdivision of the Township (or as the case may be) of  
, in the County (or as the case may be) of , do solemnly  
swear (or, if he be one of the persons permitted by law to affirm in civil cases,  
do solemnly affirm) that I will act faithfully in my capacity of Poll Clerk,



and also in that of Deputy Returning Officer, if required to act as such, according to law, without partiality, fear, favour or affection : So help me God.

(Signature.)

I. J.,

Poll Clerk.

32 V. c. 21, *Sch.* 12.

### FORM 17.

(Referred to in Section 81.)

#### CERTIFICATE OF THE POLL CLERK HAVING TAKEN THE OATH.

I, the undersigned, hereby certify, that on the \_\_\_\_\_ day of \_\_\_\_\_ the month of \_\_\_\_\_, I. J., Poll Clerk for the \_\_\_\_\_ Poll-  
ing Subdivision of the Township (or as the case may be) of \_\_\_\_\_  
, in the County (or as the case may be) of \_\_\_\_\_, took  
and subscribed before me the oath (or affirmation) of office required of a  
Poll Clerk in such cases by the eighty-first section of "*The Election Act of  
Ontario.*"

In testimony whereof, I have delivered to him this Certificate under  
my hand.

(Signature)

C. D.,

Justice of Peace.

or A. B.,

Returning Officer.

or G. H.,

Deputy Returning Officer.

32 V. c. 21, *Sch.* 13.

### FORM 18.

(Referred to in Section 91.)

#### FORM OF OATH OF PERSON VOTING IN RESPECT OF REAL ESTATE.

You swear (or solemnly affirm) that you are the person named (or pur-  
porting to be named, by the name of \_\_\_\_\_) on the  
list of voters now shown unto you (showing the list to the voter);

That on the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight  
hundred and \_\_\_\_\_ (the day certified by the Clerk of the  
Municipality as the date of the return or of the final revision and correction  
(as the case may require) of the assessment roll upon which the voters' list  
used at the election is based for the Township, City, Town, or Village, as the  
case may be), you were (and, if the fact be so, still are) actually, truly and in  
good faith possessed to your own use and benefit as owner (or tenant, or  
occupant, as the case may be), of the real estate in respect of which your  
name (or the said name of \_\_\_\_\_) is entered on the  
said list of voters (or, if the person has ceased to be such owner, tenant, or  
occupant, as the case may be, then insert these words, "and that you are still  
a resident of this Electoral District") and as such entitled to vote at this  
election;

That you are of the full age of twenty-one years;

That you are a subject of Her Majesty by birth (or naturalization);

That you have not voted before at this election, either at this or any other polling place ;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith ;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election :

So help you God.

32 V. c. 21, *Sch.* 17 ; 36 V. c. 2, s. 5 ;

40 V. c. 10, ss. 7 & 9.

### FORM 19.

(Referred to in Section 91.)

#### FORM OF OATH OF PERSON VOTING IN RESPECT OF INCOME.

You swear (or solemnly affirm) that you are the person named (or purporting to be named, by the name of ) on the list of voters now shown to you (*showing the list to voter*) ;

That on the day of one thousand eight hundred and (the day certified by the Clerk of the Municipality as the date of the final revision and correction of the assessment roll, upon which the voters' list used at the election is based, for the Township, City, Town, or Village, as the case may be), you were, and thenceforward have been continuously, and still are a resident of this Township (City, Town or Village, as the case may be) ;

That at the said date, and for twelve months previously, you were in receipt of an income from your trade (office, calling or profession, as the case may be) of a sum of not less than four hundred dollars ;

That you are of the full age of twenty-one years ;

That you are a subject of Her Majesty by birth (or naturalization, as the case may be) ;

That you have not voted before at this election, either at this or any other polling place ;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith ;

That you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting ;

And that you have (*if the voters' list being used is based on the assessment roll for any previous year, insert these words, "prior to the thirty-first day of December last past ;" Or if the voters' list being used is based on the assessment roll for the same year as that in which the election is being held, and the voter has paid his taxes, then insert these words : "before the date of the writ under which this election is being held,"*) duly paid all municipal taxes whatsoever assessed or rated against you in respect of the income for and by reason of which you are rated and entered on the assessment roll upon which the voters' list used at this election is based :

So help you God.

(*Or if the voters' list being used is based on the assessment roll for the same year as that in which the election is held, but the Collector's roll for the same year has not been in the Collector's hands for at least one month before the date of the writ of election, and the voter has not paid the municipal taxes, then omit all the*

*words of this oath after the words "refrain from voting," and instead thereof insert the following: and that the Collector's roll based on the assessment roll upon which the voters' list used at this election is based has not been in the hands of the Collector for at least one month before the date of the writ under which this election is being held :*

So help you God.

39 V. c. 10, s. 10 ; 40 V. c. 10, s. 10.

---

### FORM 20.

(Referred to in Section 91.)

FORM OF OATH OR AFFIRMATION TO BE REQUIRED FROM A FARMER'S SON.

You swear (or solemnly affirm) that you are the person named (or purporting to be named by the name of ) in the list of voters now shown to you (*showing the list to the voter*) ;

That on the                      day of                      18                      (*the day certified by the Clerk of the Municipality as the date of the return or final revision and correction, as the case requires, of the Assessment Roll upon which the voters' list used at the election is based*) A. B. (*viz., the voter's father or mother, naming him or her*) was, as you verily believe, actually, truly, and in good faith possessed to his (or her) own use and benefit as owner of the real estate, in respect of which your name is so as aforesaid entered on the said voters' list ;

That you are a son of the said A. B. ;

That you resided on the said property for the twelve months next before the return by the Assessor of the assessment roll on which the voters' list used at this election is based, not having been absent during that period except temporarily and not more than four months in all ;

That you are still a resident of this Electoral District, and are entitled to vote at this election ;

That you are of the full age of twenty-one years ;

That you are a subject of Her Majesty, by birth (or naturalization) ;

That you have not voted before at this election, either at this or any other polling place ;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith ;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election ;

So help you God.

40 V. c. 9, s. 8 ; c. 10, ss. 7 & 9.

---

### FORM 21.

(Referred to in Section 91.)

FORM OF OATH TO BE TAKEN BY VOTER ON A SUPPLEMENTARY LIST OF VOTERS MADE WHERE ADDITIONS HAVE BEEN MADE TO A CITY, TOWN OR VILLAGE, OR A NEW VILLAGE HAS BEEN FORMED, COMPOSED OF TERRITORY SITUATE IN TWO OR MORE ELECTORAL DISTRICTS.

You swear (or solemnly affirm) that you are the person named (or purporting to be named, by the name of ) on the supple-

mentary list of voters now shown unto you (*showing the list to the voter*);

That on the                      day of                      18                      (*the day certified by the Clerk of the Municipality as the date of the return or of the final revision and correction, as the case may require, of the assessment roll upon which the voters' list used at the election is based for the Township, City, Town or Village, as the case may be*), you were (and, if the fact be so, still are) actually, truly and in good faith possessed to your own use and benefit as owner (*or tenant, or occupant, as the case may be*) of the real estate in respect of which your name (*or the said name of*                      ) is entered on the said supplementary list of voters (*or if the party has ceased to be such owner, tenant or occupant, then insert these words, "and that you are now a resident of this Electoral District"*), and as such entitled to vote at this election;

That you are of the full age of twenty-one years;

That you are a subject of Her Majesty by birth (*or naturalization*);

That you have not voted before at this election, either at this or any other polling place;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election:

So help you God.

38 V. c. 3, *Sch. A.*; 40 V. c. 10, ss. 8 and 9.

---

## FORM 22.

(*Referred to in Section 92.*)

FORM OF OATH TO BE TAKEN BY VOTERS IN CERTAIN PLACES WHERE THERE ARE NO VOTERS' LISTS, AND ALSO IN ALGOMA.

You swear (*or solemnly affirm*) that you are (*name the voter*);

That you are actually, truly and in good faith possessed to your own use and benefit as owner of real estate in this Electoral District of the value of two hundred dollars or upwards (*or that you are actually, truly and in good faith a resident householder in this Electoral District*);

That you have been such owner (*or resident householder, as the case may be*) for the six months next preceding this election, and are entitled to vote at this election;

That you are of the full age of twenty-one years;

That you are a subject of Her Majesty by birth (*or naturalization*);

That you have not voted before at this election, either at this or at any other polling place;

That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to vote at this election, or for loss of time, travelling expenses, hire of team, or any other service connected therewith;

And that you have not, directly or indirectly, paid or promised anything to any person, either to induce him to vote or to refrain from voting at this election:

So help you God.

38 V. c. 3, *Sch. B.*

## FORM 23.

*(Referred to in Section 100.)*

## FORM OF DECLARATION OF INABILITY TO READ.

I, *A. B.*, of \_\_\_\_\_, being numbered \_\_\_\_\_ on the voters' list for Polling Subdivision No. \_\_\_\_\_, in the Electoral District of \_\_\_\_\_, do hereby declare that I am unable to read (or that I am from physical incapacity unable to mark a ballot paper, as the case may be.)

*A. B.* (His  $\times$  mark.)

The \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_

37 V. c. 5, *Sch. C.*

## FORM 24.

*(Referred to in Section 100.)*

## FORM OF ATTESTATION CLAUSE TO BE WRITTEN UPON OR ANNEXED TO THE DECLARATION OF INABILITY TO READ.

I, the undersigned, being the Deputy Returning Officer for Polling Subdivision No. \_\_\_\_\_ for the Electoral District of \_\_\_\_\_ do hereby certify that the above (or as the case may be) declaration, having been first read to the above named *A. B.*, was signed by him in my presence with his mark.

(Signed) *C. D.*,  
Deputy Returning Officer for Polling  
Subdivision No. \_\_\_\_\_, in the Electoral  
District of \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18 \_\_\_\_\_

37 V. c. 5, *Sch. D.*

## FORM 25.

*(Referred to in Section 102.)*

## FORM OF OATH OF VOTER WHOSE NAME IS NOT ON THE VOTERS' LIST.

You swear (or solemnly affirm) that you believe that your name ought to have been entered upon the voters' list to be used for the Polling Subdivision of the Township (or as the case may be) of \_\_\_\_\_, in the Electoral District of \_\_\_\_\_, at the present election, and that your name has been improperly omitted from such voters' list.  
(Add the statements necessary for voter's oath in other cases.)

37 V. c. 5, *Sch. E.*



## FORM 26.

*(Referred to in Sections 109 and 113.)*OATH OF THE DEPUTY RETURNING OFFICER AFTER THE CLOSING  
OF THE POLL.

I, the undersigned, Deputy Returning Officer for the  
Polling Subdivision of the Township (*or as the case may be*), of  
in the Electoral District of , do solemnly swear (*or if he be a  
person permitted by law to affirm*, do solemnly affirm) that to the best of  
my knowledge the annexed voters' list used in and for the said  
Polling Subdivision of the said Township (*or as the case may be*), was so  
used under my direction in the manner prescribed by law, and that the  
entries required by law to be made therein were correctly made.

(Signed) C. D.,  
Deputy Returning Officer.

Sworn (*or affirmed*) and subscribed before me at ,  
this day of , A.D. 18 .

(Signed) X. Y.,  
Justice of the Peace.  
Or A. B.,  
Returning Officer.

NOTE.—*The foregoing oath is to be annexed to the voters' list used at the  
election.*

37 V. c. 5, Sch. I.

## FORM 27.

*(Referred to in Sections 109 and 114.)*

## OATH OF THE POLL CLERK AFTER THE CLOSING OF THE POLL.

I, the undersigned, Poll Clerk for the Polling Subdivision  
of the Township (*or as the case may be*), of , in the Electoral District  
of , do solemnly swear (*or if he be a person permitted by law  
to affirm*, do solemnly affirm) that the annexed voters' list used in and for  
the said Polling Subdivision of the said Township (*or as the  
case may be*), under the direction of C. D., who has acted as Deputy Re-  
turning Officer for such Polling Subdivision, has been so used by me  
under his direction as aforesaid, and that the entries required by law to  
be made therein have been so made by me correctly and to the best of my  
skill and judgment.

(Signed) E. F.,  
Poll Clerk.

Sworn (*or affirmed*) and subscribed before me at this  
day of , A.D. 18 .

(Signed) X. Y.,  
Justice of the Peace.  
(Signed) A. B.,  
Returning Officer.  
(Signed) C. D.,  
Deputy Returning Officer.

NOTE.—*The foregoing oath is to be annexed to the voters' list used at the  
election.*

37 V. c. 5, Sch. H.

## FORM 28.

*(Referred to in Section 147.)*

## FORM OF STATUTORY DECLARATION OF SECRECY.

I solemnly promise and declare that I will not at this election for the Electoral District of (as the case may be) do anything forbidden by section one hundred and forty-six of "*The Election Act of Ontario*," which section has been read to me.

(Signed) A. B.,  
Returning Officer.  
(or as the case may be.)

NOTE.—Section one hundred and forty-six must be read to the declarant by the person taking the declaration.

37 V. c. 5, Sch. F.

## SCHEDULE B.

## FEES OF RETURNING OFFICERS, &amp;C. \*

*(Referred to in Section 188).**Returning Officers—Rural Electoral Districts.*

1. Drawing proclamation.....one dollar.
2. Paid printing fifty copies.....actual cost.
3. Mileage on posting same, for each mile necessarily travelled from place to place, to be taxed as Sheriff's mileage on summoning jurors.....ten cents per mile.
4. Holding election and making return (if no contest), including appointment and swearing of Election Clerk.....ten dollars.
5. Election Clerk, one day.....two dollars.
6. Two constables, one day (each).....one dollar.

*And the following additional charges in contested cases :*

7. Appointing Deputies, and swearing them (each).....fifty cents.
8. Furnishing copies of voters' lists, when necessary .....as allowed by *Rev. Stat. c. 9, s. 31.*
9. Mileage to deliver same to Deputies, when necessary ; only one mileage for both, to be taxed as above, per mile.....ten cents.

10. Making up and transmitting returns to the Clerk of the Crown in Chancery (including duplicates to each candidate, and all other necessary services connected therewith)..... *ten dollars.*
11. For services under sections 123 and 124, such amount as the Lieutenant-Governor may think reasonable under the circumstances of the case.
12. Postage.....*amount actually paid out.*
13. Pay of Election Clerk, one day.....*two dollars.*
14. Mileage of Returning Officer, and Election Clerk, going to and returning from the election on nomination day (each).....*ten cents for every mile necessarily travelled.*

*Deputy Returning Officers.*

15. Taking the polls, including all the services connected therewith, and making returns.....*four dollars.*
16. Paid Poll Clerk, one day..... *two dollars.*
17. Paid one constable, one day.....*one dollar.*
18. For each polling booth, *actual cost, not exceeding four dollars*, to be paid by the Township Treasurer, on the order of the Deputy Returning Officer, unless the Township Council provide suitable polling places at their own expense.

*In Cities and Towns.*

19. To Returning Officers in cities and towns, holding election and making returns, when no contest (exclusive of actual charge for printing) ..... *ten dollars.*
20. When election contested (exclusive of actual charge for printing). . . . . *twenty dollars.*
21. To Deputy Returning Officers, Election Clerks, Poll Clerks and Constables, the same charge as at rural elections; and the like charge paid in the same manner, for polling booths, as in rural polling places.

## CHAPTER 11.

## An Act respecting Controverted Elections of Members of the Legislative Assembly.

Short title, s. 1.

Interpretation, s. 2.

“The Court.”

“Members.”

“Election.”

“District.”

“Candidate.”

“Corrupt practices.”

“Rules of Court.”

“Prescribed.”

“The Speaker.”

Presentation of a petition.

By whom, ss. 3-7.

Form of Petition, s. 8.

When to be presented, and to whom, ss. 9, 10.

Particulars to be verified, s. 11.

Copy to be sent to Returning Officer and published by him, s. 12.

Security for costs, ss. 13, 14.

Notice of petition to be served, s. 15.

List of petitions, s. 16.

Preliminary Examination of parties, ss. 17-26.

Production and inspection of documents, ss. 27-31.

Trial of a petition—

Rota of Judges for trial of petitions, ss. 32-37.

Allegation of corrupt practices to be tried by two judges, s. 38.

Other allegations by one judge, s. 39.

Trial to be in the District, s. 40.

Notice of trial, s. 41.

Powers of Judges, ss. 42-44.

Trial not to be stopped by acceptance of office, &c., s. 45.

Application to change petitioner, where delay in fixing day for trial, s. 46.

Trial to be begun within six months, s. 47.

When not to be held during a Session, s. 48.

Evidence of corrupt practices when received, s. 49.

Evidence in petitions, claiming the suit, s. 50.

Witnesses, ss. 51-54.

Judge's Report—

Report of determination of case to the Speaker, s. 55.

Reservation of questions for the Court, ss. 56, 57.

Report where corrupt practices charged, s. 58.

Special Report, s. 59.

Action of Legislative Assembly upon report, ss. 60, 61.

Special cases, s. 62.

Appeals—

Procedure on, ss. 63-65.

Powers of Court—

To review decision on questions of fact, s. 66.

To amend proceedings and receive further evidence, ss. 67, 68.

To direct new trial, s. 71.

Costs, s. 69.

Certificate of judgment to Speaker, s. 70.

Scrutiny of votes by Registrars or other officers—

Procedure for, ss. 72-78.

Appeal from Registrar, ss. 79, 81.

Withdrawal of petition, by petitioner, ss. 82-89.

Abatement of petition by death of petitioner, ss. 90-93.

Withdrawal of respondent from opposition, ss. 94-97.

Costs, ss. 97-102.

Rules of Court, ss. 103-104.

Miscellaneous—

Punishment of contempt, s. 105.

Computation of time, s. 106.

Who may practice as Attorneys, &c., in Election matters, s. 107.

Expenses of the Judge, &c., s. 108.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Controverted Elections Act*," or "*The Controverted Elections Act of Ontario*." 

Short title of Act.

2. The following terms shall in this Act have the meaning hereinafter assigned to them, unless there is something in the context repugnant to such construction, that is to say: 

Interpretation of terms.

(1.) The expression "The Court" shall for the purposes of this Act mean the Court of Appeal; and such Court and the Registrar thereof shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority with reference to an election petition and the proceedings thereon, as the Court of Queen's Bench, and the Clerk of the Crown and Pleas in that Court would have respectively if such petition were an ordinary cause within the jurisdiction of that Court, and the practice and proceedings, including the mode of enforcing decisions as to costs and otherwise, shall in all respects be the same as at present until altered by the Court of Appeal, as provided by this Act. 

"The Court."

Practice as heretofore till varied.

 34 V. c. 3, s. 2; 38 V. c. 3, s. 2.

(2.) "Member" shall mean a member of the Legislative Assembly. 

"Member."

 34 V. c. 3, s. 3.

(3.) "Election" shall mean an election of a member to serve in the Legislative Assembly. 

"Election."

 34 V. c. 3, s. 3.

(4.) "District" shall mean an Electoral District returning a member. 

"District."

 34 V. c. 3, s. 3.

(5.) "Candidate" shall mean any person elected to serve as a member, and any person who has been nominated as or declared himself a candidate at an election. 

"Candidate."

 34 V. c. 3, s. 3.

(6.) "Corrupt practices," or "corrupt practice," shall mean bribery, treating and undue influence, or any of such offences, as defined by this or any Act of the Legislature, or recognized by the Common Law of the Parliament of England; also any violation of the one hundred and fifty-first, one hundred and fifty-fourth, or one hundred and fifty-sixth sections of "*The Election Act*;" and any violation of the one hundred and fifty-seventh section of the last mentioned Act during the hours appointed for polling. 

"Corrupt practices" and "corrupt practice."

Furnishing entertainment.

Hiring Vehicles.

Personation.

Selling liquor.

 36 V. c. 2, s. 1.

(7.) "Rules of Court" shall mean Rules to be made as mentioned in the one hundred and third and one hundred and fourth sections of this Act. 

"Rules of Court."

 34 V. c. 3, s. 3.

(8.) "Prescribed" shall mean "prescribed by the Rules of Court." 

"Prescribed."

 34 V. c. 3, s. 3.

9. "The Speaker" shall mean the Speaker of the Legislative Assembly, or, when the office of Speaker is vacant, the Clerk of the Assembly. 

"The Speaker."



of the Legislative Assembly, or any other officer for the time being performing the duties of the Clerk of the Legislative Assembly. 34 V. c. 3, s. 4.

#### PRESENTATION OF PETITION.

By whom an election petition may be presented :

3. A petition complaining of the undue return or undue election of a member, may be presented to the Court by any one or more of the following persons :

by voters,

(a.) Some person who voted, or who had a right to vote, at the election to which the petition relates ; or

by persons claiming to be elected.

(b.) Some person claiming to have had a right to be returned or elected at such election ; or

by candidates,

(c.) Some person alleging himself to have been a candidate at such election ;

and such petition is hereinafter referred to as an election petition. 34 V. c. 3, s. 5.

Joint respondents to petition.

4. Two or more candidates may be made respondents to the same petition, and their case may, for the sake of convenience, be tried at the same time ; but for all the purposes of this Act, such petition shall be deemed to be a separate petition against each respondent. 34 V. c. 3, s. 27.

Petition complaining of a Returning Officer.

5. Where an election petition under this Act complains of the conduct of a Returning Officer, such Returning Officer shall, for all the purposes of this Act, except the admission of respondents in his place, be deemed to be a respondent. 34 V. c. 3, s. 54.

Petitions complaining of no return.

6. A petition under this Act complaining of no return may be presented to the Court, and shall be deemed to be an election petition within the meaning of this Act, and the Court may make such order thereon as it thinks expedient for compelling a return to be made, or may allow such petition to be tried by the Judge in manner hereinbefore provided with respect to ordinary election petitions. 34 V. c. 3, s. 55.

After petition against return, any one authorized to petition may petition on account of corrupt acts by candidate not returned.

7. In case a petition is presented against the return of any member, the respondent or any other person authorized by law to present an election petition, may, within fifteen days after the service of the petition against the return, file a petition complaining of any unlawful and corrupt act by any candidate at the same election who was not returned, whether the seat is or is not claimed by him or on his behalf, and the trial of such petition shall take place at the same time as the trial of the petition against such member or respondent, or at such other time as may be appointed. 38 V. c. 3, s. 1.<sup>23</sup>

8. A petition under this Act shall be in such form, and state such matters as may be prescribed, and shall be signed by the petitioner, or all the petitioners if there are more than one. 34 V. c. 3, s. 6 (1). Form of petition, and by whom to be signed.

9. The petition shall be presented within twenty-one days after the return has been made to the Clerk of the Crown in Chancery of the member to whose election the petition relates, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other act of bribery to have been committed by the member or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment or acts committed. 34 V. c. 3, s. 6 (2). Petition when to be presented;

10. Presentation of a petition shall be made by delivering it to the Registrar of the Court, or otherwise dealing with the same in manner prescribed. 34 V. c. 3, s. 6 (3). and to whom.

11. With every election petition shall be filed an affidavit by the petitioners, referring to or annexed to the petition, and stating that the deponents present the petition in good faith, and have reason to believe and do believe the statements contained in the petition to be true in substance and in fact. All particulars afterwards furnished by either party shall be verified in like manner on oath by the persons furnishing the same, or one of them. 39 V. c. 10, s. 28; 40 V. c. 7, *Sched. A* (4). Petition and particulars to be verified on oath.

12. On presentation of the petition, the Registrar of the Court shall send a copy thereof by mail to the Returning Officer of the Electoral District to which the petition relates, who shall forthwith publish the same in the District. 34 V. c. 3, s. 7. Copy of petition to be sent to Returning Officer, who shall publish the same.

#### SECURITY FOR COSTS.

13. At the time of the presentation of the petition, or within three days afterwards, security shall be given on behalf of the petitioner for the payment of all costs, charges and expenses that may become payable by the petitioner; Security for costs.

(a.) To any person summoned as a witness on his behalf; or

(b.) To the member whose election or return is complained of (who is hereinafter referred to as the respondent.) 34 V. c. 3, s. 6 (4).

14. The security shall be by a deposit of one thousand dollars, in one of the banks in which Government money is then being deposited. Security for costs to be by deposit of \$1,000.

2. Such deposit shall be made to the credit of the election petition, with the privy of the Registrar of the Court and shall be subject to such general or other rules and regulations as the Court may from time to time make, and shall not be withdrawn without the order of the Court, or of a Judge having jurisdiction in the premises. 39 V. c. 10, s. 29.

## SERVICE.

Serving petition on respondent.

Mode of service.

**15.** Notice of the presentation of a petition under this Act, accompanied with a copy of the petition, shall, within five days after the day on which security for costs is given, or within such longer time as the Court may, under special circumstances of difficulty in effecting service allow, be served by the petitioner on the respondent, as nearly as may be in the matter in which a writ of summons is served, or in such other manner as may be prescribed. 34 V. c. 3, ss. 8 & 26.

## LIST OF PETITIONS.

Registrar of the Court to make out the election list of petitions at issue.

Order in which petitions shall be tried.

Several petitions relating to same election, how placed on election list.

**16.** The Registrar of the Court shall, as soon as may be, make out a list of all petitions presented under this Act, and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the election list, open to the inspection of any person making application; and such petitions, as far as conveniently may be, shall be tried in the order in which they stand in such list. 34 V. c. 3, s. 10.

2. Where more petitions than one are presented relating to the same election or return, all such petitions shall in the election list be bracketed together, and shall be dealt with as far as may be as one petition; but such petitions shall stand on the election list in the place where the last of such petitions would have stood if it had been the only petition presented, unless the Court otherwise directs. 34 V. c. 3, s. 28.

## PRELIMINARY EXAMINATION OF PARTIES, AND PRODUCTION OF DOCUMENTS.

When and how parties to petitions may be examined.

**17.** Any party to an election petition, whether petitioner or respondent, may, at any time after such petition is at issue, be examined by or before an Examiner, in the manner hereinafter directed, by a party adverse in point of interest, touching any matter raised by such petition; and any party so examined may be further examined on his own behalf, in relation to any matter respecting which he has been examined in chief; and when one of several petitioners or respondents has been so examined, any other petitioner or respondent, united in interest, may be examined on his own behalf, or on behalf of those united with him in interest, to the same extent as the party

examined: but such explanatory examination must be proceeded with immediately after the examination in chief, and not at any future period, except by leave of the Court or a Judge. 36 V. c. 2, s. 13. Proviso.

18. Where any petition has been filed claiming a seat for a candidate, such candidate, although not a party to the petition, may be orally examined as if he were a petitioner. 36 V. c. 2, s. 14. Candidates for a seat may be examined.

19. Any party to be examined orally, under the provisions of this Act, shall be so examined by or before a County Court Judge, or before a Registrar appointed under this Act, or before a Master or Special Examiner of the Court of Chancery, or (by consent of the parties) before a Barrister-at-law specially named in the order for examination; and such examination shall take place in the presence of the parties, their counsel, agents or attorneys; and the party so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination and re-examination shall be conducted as nearly as may be in the mode now in use in Courts of Common Law on a trial at Nisi Prius, or in Chancery at the hearing of a cause. 36 V. c. 2, s. 15; 39 V. c. 10, s. 33. How examination of parties shall be had.

20. The depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the Examiner, not ordinarily by question and answer, but in the form of a narrative; and when completed shall be read over to the witness, and signed by him, in the presence of the parties, or of such of them as may think fit to attend. Depositions, how taken down,

2. In case the witness refuses or is unable to sign the said depositions, then the Examiner shall sign the same; and such Examiner may, upon every examination, state any special matter to the Court if he thinks fit. And signed.

3. It shall be in the discretion of the Examiner to put down any particular question or answer, if there should appear to be any special reason for so doing; and any question or questions objected to shall, at the request of either party, be noticed or referred to by the Examiner in or upon the depositions; and he shall state his opinion thereon to the counsel, agents, attorneys, or parties; and if requested by either party, he shall refer to such statement on the face of the depositions, 36 V. c. 2, s. 16. Certain questions to be taken down.

21. When the examination before the Examiner is concluded the original depositions, authenticated by the signature of such Examiner, shall be transmitted by him to the office of the Court, to be there filed; and any party to the petition may have a copy thereof, or of any part or portion thereof, upon payment for the same in such manner as may be prescribed by the Court in that behalf. 36 V. c. 2, s. 17. Depositions, transmission to the Court, and copies of.



Compelling  
attendance of  
witnesses.

**22.** The attendance of a party or other person for oral examination or cross-examination before the Examiner, may be required by writ of *subpœna ad testificandum* or *duces tecum*, in like manner as such party or person would be required to attend at the trial of the petition, and any party or person, upon being served with such writ, shall be bound to attend before the Examiner; but such party or person shall be entitled to the like payment for attendance and expenses, as if he had been subpœnaed to attend upon the trial. 36 V. c. 2, s. 18.

Attendance of  
witnesses be-  
ing prisoners.

**23.** The Sheriff, gaoler or other officer having the custody of any prisoner, may take such prisoner for examination before the Examiner, under the authority of this Act, if so ordered by the Court or a Judge. 36 V. c. 2, s. 19.

Forty-eight  
hours' notice  
of examina-  
tion.

**24.** Forty-eight hours' notice of any such oral examination or cross-examination shall be given to the opposite party or parties. 36 V. c. 2, s. 20.

Penalty for  
non-attend-  
ance or refu-  
sal of witness  
to answer.

**25.** Any party or person who refuses or neglects to attend at the time and place appointed for his examination or cross-examination, or refuses to be sworn or to answer any lawful question put to him by the Examiner, or by any party entitled so to do, or his counsel, agent, or attorney, may be punished as for a contempt of Court: but if any witness demurs or objects to any question or questions put to him, the question or questions so put, and the demurrer or objection of the witness thereto, shall be taken down by the Examiner, and transmitted by him to the office of the Court, to be there filed; and the validity of such demurrer or objection shall be decided by the Court or a Judge; and the costs of and occasioned by such demurrer or objection shall be in the discretion of the Court or Judge. 36 V. c. 2, s. 21.

Demurrer to  
questions.

Depositions  
may be used  
on trial.

**26.** Any party to a petition shall be entitled to use, upon the trial of such petition, depositions taken by or before the Examiner, in accordance with the provisions of this Act; but where such party uses any portion of a deposition so taken, it shall be competent for the party against whom it is used to put in the entire evidence so taken, as well that in chief as that in explanation. 36 V. c. 2, s. 22.

Production,  
inspection,  
and copies of  
documents.

**27.** Any party to an election petition, whether petitioner or respondent, may, at any time after such petition is at issue, obtain a rule requiring the adverse party to produce within ten days after the service thereof, under oath, all documents in his custody or power relating to the matters in question, saving all just exceptions; and to deposit the said documents with the Registrar of the Court; and upon such documents being produced, the party requiring such production and his agent or attorney may inspect the same and take examined copies thereof.



2. When any person upon whom a rule to produce has been served wishes to avail himself of any such exception as above mentioned, he must in his affidavit on production assign a sufficient reason why he should not produce and deposit the same in manner aforesaid. 36 V. c. 2, s. 23.

28. The rule referred to in the preceding section shall be a rule in the nature of a side-bar rule, and may issue in vacation as well as during the sittings of the Court; and such rule shall be dated the day of the week, month and year on which the same was drawn up, and need not specify any other time or date; and such rule may be obtained by the party requiring the same, his agent or attorney, from the Registrar of the Court. 36 V. c. 2, s. 24.

29. A rule for the production of documents shall not require personal service, and it shall be sufficient to serve the same upon the agent or attorney of the party. 36 V. c. 2, s. 25.

30. The affidavit on production to be made by the party who has been served with the rule for production, may be in the form or to the effect set forth in Schedule A to this Act. 36 V. c. 2, s. 26.

31. Any party neglecting or refusing to obey a rule for the production of documents may be punished as for a contempt. 36 V. c. 2, s. 27.

#### TRIAL OF PETITIONS.

32. The trial of every election petition shall be conducted before a Judge or two Judges selected from a *rota* to be formed as hereinafter mentioned. 34 V. c. 3, s. 11 (1); 39 V. c. 10, s. 34.

33. The members of the Courts of Appeal, Queen's Bench, Chancery and Common Pleas respectively shall, on or before the third day of Michaelmas Term in every year, select by a majority of votes of the members of such Court, one of the Judges thereof to be placed on the *rota* for the trial of election petitions during the then ensuing year. 34 V. c. 3, s. 11 (2); 37 V. c. 7, s. 14.

34. Any Judge placed on the *rota* shall be re-eligible in the succeeding or any subsequent year. 34 V. c. 3, s. 11 (3).

35. In the event of the death or illness of any Judge for the time being on the *rota*, or his inability to act for any reasonable cause, the Court to which he belongs shall fill up the vacancy by placing on the *rota* another Judge of the same Court. 34 V. c. 3, s. 11 (4).

Manner in which the trial shall be taken by the Judges.

**36.** The Judges for the time being on the *rota* shall, according to their seniority, respectively try the election petitions standing for trial under this Act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement. 34 V. c. 3, s. 11 (5).

When the number of Judges on the *rota* may be increased.

**37.** When it appears to the Judges on the *rota*, after due consideration of the list of petitions under this Act for the time being at issue, that the trial of such election petitions will be inconveniently delayed, unless an additional Judge or Judges be appointed to assist the Judges on the *rota*, each of the said Courts of Appeal, Queen's Bench, Chancery and Common Pleas, in the order named, shall, on the requisition of such Judges on the *rota*, and to the number of the additional Judges required, select, in manner hereinbefore provided, one of the Judges of such Court to try election petitions for the ensuing year; and any Judge so selected shall, during that year, be deemed to be on the *rota* for the trial of election petitions. 34 V. c. 3, s. 11 (6).

Allegations of corrupt practices to be tried by two judges.

**38.** Allegations of corrupt practices against a candidate or his agents shall be tried by two of the Judges on the *rota* sitting together (hereinafter referred to as the Judges); and no candidate shall be unseated for corrupt practice, nor shall any person be declared guilty of a corrupt practice, except upon the decision of the two Judges jointly, or of the Court of Appeal. 39 V. c. 10, s. 34; 40 V. c. 7, *Sched. A* (5).

Judge to try petitions without a jury.

**39.** Every petition shall, except as aforesaid, and except where the petition raises a question of law for the determination of the Court, as herein mentioned, be tried by one of the Judges on the *rota* (hereinafter referred to as the Judge), sitting in open Court, without a jury. 34 V. c. 3, s. 12; 40 V. c. 7, *Sched. A* (6).

Where the trial shall take place.

**40.** The trial of an election petition shall take place in the Electoral District, the election or return for which is in question, unless it appears to the Court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the District, in which case it shall be lawful for the Court to appoint such other place for the trial as appears most convenient. 34 V. c. 3, s. 14.

Notice of trial.

**41.** Notice of the time and place at which an election petition will be tried, shall be given not less than fourteen days before the day on which the trial is to take place, in the prescribed manner. 34 V. c. 3, s. 13.

Reception and attendance on the Judge.

**42.** The Judge or Judges shall be received and attended at the place where he or they is or are about to try an election petition under this Act, in the same manner, so far as circumstances will admit, as a Judge of Assize is received and attended

at an Assize Town and sitting at Nisi Prius, and the expenses of such attendance shall be deemed to be part of the expenses of providing a Court. 34 V. c. 3, s. 31.

**43.** On the trial of an election petition under this Act, the Judge or Judges shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority as Judges of the Superior Courts, and as Judges of Assize and Nisi Prius, and the Court held by him or them shall be a Court of Record. 34 V. c. 3, s. 33.

**44.** The Judge or Judges at the trial may adjourn the same from time to time, and from any one place to any other place within the District, as to him or them may seem expedient. 34 V. c. 3, s. 15.

**45.** The trial of an election petition under this Act shall be proceeded with, notwithstanding the acceptance by the respondent of an office of profit under the Crown, or his resignation of the seat, and notwithstanding the prorogation of the Legislative Assembly. 34 V. c. 3, ss. 24 & 25.

**46.** Wherever three months elapse after the presentation of a petition, without the day for the trial being fixed, any elector may, on application, be substituted for the petitioner on such terms as may be just. 39 V. c. 10, s. 31.

**47.** Subject to the provisions of the next succeeding section, Trial, the trial of every election petition shall be commenced within six months from the time when the petition was presented, and shall be proceeded with *de die in diem* until the trial is over, unless on application supported by affidavit it is shown that the requirements of justice render it necessary that a postponement of the case should take place. 39 V. c. 10, s. 30.

**48.** In case the member elect is entitled to take his seat, the trial of the election petition shall not, without his consent, be held during a Session of the Legislative Assembly, or within fifteen days after the close of a Session; and in the computation of any delay allowed for any step or proceeding in respect of the trial, or for the commencement of the trial under the next preceding section, the time occupied by the Session shall not be reckoned. 39 V. c. 10, s. 31; 40 V. c. 7, *Sched. A* (7).

### *Evidence.*

**49.** Unless the Judges trying a petition otherwise direct, any charge of a corrupt practice may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practice. 34 V. c. 3, s. 23.

Evidence on trials of undue return, and claiming seat.

**50.** On the trial of a petition under this Act, complaining of an undue return, and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election. 34 V. c. 3, s. 56.

*Witnesses.*

Witness, how subpoenaed and sworn.

**51.** Witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances admit, as on a trial at Nisi Prius. 34 V. c. 3, s. 34.

Judge may order attendance of witnesses

**52.** On the trial of an election petition under this Act the Judge or Judges may, by order under his or their hand or hands, compel the attendance of any person as a witness who appears to him or them to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of Court. The Judge or Judges may examine any witness so compelled to attend or any person in Court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by the Judge or Judges, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them. 34 V. c. 3, s. 35.

Examination of such witnesses.

Persons not excused from answering before Court, etc., on the ground that answers may criminate.

**53.** No person shall be excused from answering any question put to him in any trial under this Act, touching or concerning any election, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will tend to criminate himself, shall be used in any proceeding against such person under any Act of the Legislature of Ontario, if the Judge or Judges give to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answers, to the satisfaction of the Judge or Judges. 34 V. c. 3, s. 36.

Expenses of witnesses.

**54.** The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this Act, according to the scale allowed to witnesses on the trial of civil actions at the Assizes, may be allowed to such person by a certificate, under the hand of a Judge or of the Registrar of the Court, and such expenses, if the witness was called and examined by a Judge, shall be deemed to be part of the expenses of providing a Court, and in other cases shall be deemed to be costs of the party calling the witness. 34 V. c. 3, s. 37.

JUDGES' REPORT.

Judge to determine the is-

**55.** At the conclusion of the trial, the Judge or Judges who tried the petition shall determine whether the member whose



election or return is complained of, or any and what other person was duly returned or elected, or whether the election was void, and shall forthwith certify, in writing, such determination to the Speaker appending thereto a copy of his or their notes of the evidence, and upon such certificate being given, such determination shall be final to all intents and purposes. **34 V. c. 3, s. 16.**

**56.** If it appears to the Judge or Judges on the trial of a petition that any question or questions of law as to the admissibility of evidence, or otherwise, require further consideration by the Court, then the said Judge or Judges may postpone the granting of the said certificate until the determination of such question or questions by the Court, and for this purpose may reserve any such question or questions in like manner as questions are usually reserved by a Judge on a trial at Nisi Prius. **34 V. c. 3, s. 20.**

**57.** In case of disagreement between the Judges before whom a case is tried, they shall certify such disagreement, and either party may thereupon bring the matter before the Court of Appeal, and that Court shall, in disposing thereof, have the same jurisdiction in all respects as on an appeal from a decision of such Judges. **39 V. c. 10, s. 47.**

**58.** Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Judges shall, in addition to such certificate, and at the same time, report in writing to the Speaker as follows:—

(a.) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any and which candidate at such election, and the nature of such corrupt practice;

(b.) The names of any persons who have been proved, at the trial, to have been guilty of any corrupt practice;

(c.) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates. **34 V. c. 3, s. 17.**

**59.** The Judge or Judges may in his or their report make a special report to the Speaker as to any matters, arising in the course of the trial, an account of which, in his or their judgment, ought to be submitted to the Legislative Assembly. **34 V. c. 3, s. 18.**

**60.** The Speaker shall, at the earliest practicable moment after he receives the certificate, and report or reports (if any), of the Court, Judge or Judges, communicate the same to the

sue and give certificate of such determination, with copy of his notes, to the Speaker.

Questions of law reserved at the trial.

Disagreement by Judges who tried the case.

Report of Judge where charge is made of corrupt practices.

Special report of Judge.

The Speaker to communicate Judge's report to the



Legislative  
Assembly.

Proceedings  
thereupon.

Order of Le-  
gislative As-  
sembly upon  
Judge's special  
report.

gislative Assembly, and the Legislative Assembly shall forth-  
with thereafter order the same to be entered on its Journals, and  
give the necessary directions for confirming or altering the re-  
turn, or for issuing a writ for a new election, or for carrying the  
determination into execution as circumstances may require. 34  
V. c. 3, s. 21.

**61.** Where the Judge or Judges make a special report, the  
Legislative Assembly may make such order in respect of such  
special report as they think proper. 34 V. c. 3, s. 22.

#### SPECIAL CASES.

When Court  
may order a  
special case.

**62.** When upon the application of any party to a petition,  
duly made to the Court, it appears to the Court that the case  
raised by the petition can be conveniently stated as a special  
case, the Court may direct the same to be stated accordingly,  
and any such special case shall be, as far as may be, heard be-  
fore the Court, and the decision of the Court shall be final, and  
the Court shall certify to the Speaker its determination in refer-  
ence to such special case. 34 V. c. 3, s. 19.

#### APPEALS.

Appeal: secu-  
rity for costs;

setting down  
for hearing;

notice of set-  
ting down;

**63.** Any party to an election petition under this Act who  
is dissatisfied with the decision of the Judge or Judges on any  
question of law or of fact, and desires to appeal against the  
same, may within eight days from the day on which the decision  
was given deposit with the Registrar of the Court the sum of  
one hundred dollars by way of security for costs; and there-  
upon the Registrar shall set the matter of the said petition  
down for hearing before the said Court at an early day to be  
appointed by the said Court, or a Judge thereof. 38 V. c. 3, s. 3.

**64.** The party so appealing shall thereupon within three  
days, or such further time as the Court or a Judge thereof  
may upon application allow, give to the other parties affected  
by the said appeal, or the respective attorneys or agents by  
whom such parties were represented on the trial of the said  
petition, notice in writing that the matter of the said petition  
has been so set down to be heard in appeal as aforesaid; and  
in and by the same notice the said party so appealing as afore-  
said may, if he desires, limit the subject of the said appeal to  
any special and defined question or questions. 38 V. c. 3, s. 3.

hearing;  
judgment;

**65.** The said appeal shall thereupon be heard and determined  
by the Court; and such judgment shall be pronounced, both  
upon questions of law and of fact, as in the opinion of the  
Court should have been delivered by the Judge or Judges  
whose decision is appealed against. 38 V. c. 3, s. 3.

Court to re-  
view decision  
upon facts.

**66.** Upon appeals, in cases on or involving questions of fact,  
the Court shall review the decision upon questions of fact as

well as of law, and shall draw such inference from the facts or evidence as the Judge or Judges who tried the case should have drawn. 39 V. c. 10, s. 46.

**67.** The Court shall have all the powers and duties as to amendment and otherwise of the Judge or Judges from whom the appeal is had, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit or by deposition taken before any Judge or other person whom the Court may name. 38 V. c. 3, s. 4. Powers of Court as to amendments and evidence.

**68.** Where any decision, heretofore given or hereafter to be given, by any Judge or Judges depends in whole or in part upon the credit given by him or them to particular witnesses, and the decision is appealed against, the Judge or Judges may make a written report as to the demeanour of the principal witnesses and their mode of giving their evidence, together with the reasons of such Judge or Judges for giving credit to the particular witnesses; and, with or without such a report, the Court, in view of the whole case as it then appears, may reverse or confirm the decision appealed against; or the Court may require any witnesses to be re-examined, and further evidence to be given, orally, before the Court or otherwise, upon any question of fact; and after such re-examination and further evidence, the Court shall pronounce the proper judgment in the case. 39 V. c. 10, s. 46. Judge or Judges trying, to report upon demeanour of witnesses. Re-examination of witnesses.

**69.** The Court may make such order as to the return of the said deposit and as to the costs of the said appeal as the Court may think just. 38 V. c. 3, s. 3. Costs.

**70.** The Registrar of the Court shall thereupon certify to the Speaker, or, if there is no Speaker, to the Clerk of the House the judgment and decision of the Court upon the several questions and matters of fact, as well as of law, upon which the Judge or Judges whose decision is appealed against might otherwise have determined or certified in the same manner as the Judge or Judges whose decision is appealed against would otherwise have done; and the said judgment or decision shall be final to all intents and purposes. 38 V. c. 3, s. 3. Clerk to certify judgment to the Speaker.

**71.** Instead of certifying as aforesaid, the Court, upon such conditions as to costs and otherwise as the Court may think fit, may grant a new trial for the purpose of taking evidence, or additional evidence, and may remit the case back to the Judge or Judges who tried the same, or to some other Judge or Judges upon the *rota*; and, subject to the directions given by the Court of Appeal, the case shall be thereafter proceeded with as if there had been no appeal. 38 V. c. 3, s. 5. New trial.

## SCRUTINY.

On scrutiny Judge may appoint day and place.

**72.** Where, in consequence of an election petition being presented, it becomes necessary to enter into a scrutiny of the votes polled at the election brought in question by such petition, the Judge may make provision for holding in every local Municipality in the Electoral District, the election for which is questioned, a scrutiny of the votes polled in such Municipality, in case of there being any votes therein which are objected to; and for this purpose may by order appoint a day and place within the Municipality, or each of the Municipalities respectively, as the case may be, for entering into the scrutiny, which day or days shall be a convenient time before the day on which the trial of the petition is to be held. 36 V. c. 2, s. 28.

Notice of time and place of scrutiny.

**73.** Notice of the time and place for entering into the scrutiny shall be given not less than fourteen days before the day appointed for entering into the same. 36 V. c. 2, s. 29.

Scrutiny before the Judge, or his delegate.

**74.** The scrutiny may be before the Judge, or the Judge may appoint his Registrar, or some other person, being a barrister and competent for the purpose, to act in his stead. 36 V. c. 2, s. 30.

Jurisdiction and powers of the Judge when the scrutiny is before him in person.

**75.** Where the scrutiny is entered into before the Judge in person, the provisions of law as to the jurisdiction of the Judge upon the trial of an election petition in the ordinary manner, shall apply, as nearly as may be, to the proceedings upon such scrutiny, and the said Judge shall possess the like powers and authority, as to all matters arising upon such scrutiny, as are possessed by him upon a trial in the ordinary manner. 36 V. c. 2, s. 31.

Powers of Judge's delegate on scrutiny before him.

**76.** Where the scrutiny is before a Registrar or other person appointed by the Judge, such Registrar or person shall, except as hereinafter provided, have the same powers and authority for the time being in all matters connected with the scrutiny and for conducting the same, as the Judge himself would have if personally present and acting. 36 V. c. 2, s. 32.

Delegate of Judge to take evidence in writing.

**77.** It shall be the duty of any Registrar or other person acting under an appointment made in pursuance of the preceding section, to take down in writing the evidence given before him upon the scrutiny. 36 V. c. 2, s. 33.

Delegate may decide or reserve questions of law or fact.

**78.** At or before the conclusion of the scrutiny in each Municipality, the Registrar, or other person so acting as aforesaid, shall either decide the questions of law and fact raised before him, or shall reserve the same, or any of them, for the decision of the Judge at the trial: and shall make a note in writing of every such decision or reservation, as the case may be, for the information of the Judge; and shall publicly an-

Note and announcement of decision to be made.

nounce such decision or reservation for the information of the public and the parties interested. 36 V. c. 2, s. 34.

**79.** If any party is dissatisfied with any decision of the Registrar, or other person so acting as aforesaid, he may object thereto before the Judge at the trial to be had as aforesaid: provided, that within eight days from the conclusion of the scrutiny, he gives notice in the manner hereinafter mentioned to the opposite party of his intention to so object, and the Judge may, in his discretion, refuse at the trial before him to consider any points not raised before the Registrar, or other person so acting as aforesaid, for his decision; and in case the Judge does consider the same, and allows the appeal on a ground not distinctly taken before the Registrar, or person so acting as aforesaid, the Judge may order the appellant, though successful, to pay the costs of and incidental to the appeal. 36 V. c. 2, s. 35.

Appeal from decision of delegate.

**80.** The party intending to object shall within eight days deliver in person, or by his attorney or agent, to the Registrar, a written notice of his intention to object; and he shall also in person, or by his attorney or agent, serve a like notice upon the opposite party, his attorney or agent, within eight days from the conclusion of the scrutiny. 36 V. c. 2, s. 36.

Notice of appeal, time for.

**81.** The notice shall mention the grounds of objection, and may be in the form of Schedule B to this Act or to the like effect. 36 V. c. 2, s. 37.

Notice of appeal, form of.

#### WITHDRAWAL AND ABATEMENT OF ELECTION PETITIONS.

**82.** An election petition under this Act shall not be withdrawn without the leave of the Court or a Judge upon special application, to be made in and at the prescribed manner, time and place. 34 V. c. 3, s. 38.

Withdrawal of petitions.

**83.** No such application shall be made until the prescribed notice has been given in the Electoral District to which the petition relates, of the intention of the petitioner to make an application for the withdrawal of his petition. 34 V. c. 3, s. 38.

Notice of withdrawal.

**84.** On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the Court or a Judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

Substitution of new petitioner.

**2.** The Court or Judge may, if it or he thinks fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is, in the opinion of the Court or Judge, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original

Order as to security where withdrawal is induced by corrupt bargain.



petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner. 34 V. c. 3, s. 38.

Security to be given by substituted petitioner.

**85.** If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution. 34 V. c. 3, s. 38.

Liabilities of substituted petitioner.

**86.** Subject as aforesaid, a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities as the original petitioner. 34 V. c. 3, s. 38.

Costs.

**87.** If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent, unless the Court otherwise orders. 34 V. c. 3, s. 38.

All petitioners must join in withdrawal.

**88.** Where there are more petitioners than one, no application to withdraw a petition shall be made, except with the consent of all the petitioners. 34 V. c. 3, s. 38.

Court to report whether withdrawal was the result of a corrupt arrangement, &c.

**89.** In every case of the withdrawal of an election petition under this Act, the Court or Judge shall report to the Speaker whether in its or his opinion the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and if so, the circumstances attending the withdrawal. 34 V. c. 3, s. 39.

Abatement of petition by death.

**90.** An election petition under this Act shall be abated by the death of a sole petitioner, or of the survivor of several petitioners. 34 V. c. 3, s. 40.

Costs.

**91.** The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred. 34 V. c. 3, s. 40.

Notice of abatement to be given.

**92.** On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the Electoral District to which the petition relates; and, within the prescribed time after the notice is given, any person whomight have been a petitioner in respect of the election to which the petition relates may apply to the Court or a Judge, in and at the prescribed manner, time and place, to be substituted as a petitioner. 34 V. c. 3, s. 40.

Substitution of new petitioner.

**93.** The Court or Judge may, if it or he thinks fit, substitute as a petitioner any such applicant who is desirous of being sub-



stituted, and on whose behalf security to the same amount is given as is required in the case of a new petition. 34 V. c. 3, s. 40.

**94.** If before or during the trial of any election petition under this Act, any of the following events happen in the case of the respondent (that is to say):

(a.) If he dies;

(b.) If the Legislative Assembly has resolved that his seat is vacant;

On death of respondent,  
vacation of seat, or

(c.) If he gives in and at the prescribed manner and time, notice to the Court or Judge that he does not intend to oppose, or further to oppose the petition,

withdrawal from opposition, and no notice thereof,

notice of such event having taken place shall be given in the Electoral District to which the petition relates, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the Court or Judge to be admitted as a respondent to oppose the petition, or so much thereof as may remain undisposed of, and such person may on such application be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondent; and any number of persons, not exceeding three, may be so admitted; and, if either of such events happens during the trial, the Judge or Judges shall adjourn the trial in order that notice, as herein provided, that such event has happened, may be given. 34 V. c. 3, s. 41.

others admitted as respondents.

**95.** A respondent who has given the prescribed notice that he does not intend to oppose or further oppose the petition, shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the Legislative Assembly until the Legislative Assembly has been informed of the report on the petition; and the Court or Judge shall, in all cases in which such notice has been given in the prescribed time and manner, report the same to the Speaker. 34 V. c. 3, s. 42.

Respondent not opposing petition not to appear as a party or sit in the Legislative Assembly.

**96.** Where an election petition under this Act complains of a double return, and the respondent has given notice in the prescribed way that it is not his intention to oppose the petition, and no party has been admitted, in pursuance of this Act, to oppose the petition, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition by notice addressed to the prescribed officer; and upon the receipt of such notice, the prescribed officer shall report the fact of the withdrawal of such petition to the Speaker; and the Legislative Assembly

Cases of double return, where the respondent declines to defend.

shall thereupon give such necessary directions for amending the said double return, as the case may require. 34 V. c. 3, s. 43.

## COSTS.

Costs of petition.

**97.** All costs, charges and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the Court or Judge may determine, regard being had to the disallowance of any costs, charges or expenses which may, in the opinion of the Court or Judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful. 34 V. c. 3, s. 44.

When agent made to pay costs.

**98.** In case, on the trial of any election petition, it is proved that any corrupt practice has been committed by an agent of a candidate, without the knowledge or consent of the candidate, and that costs should be awarded to the petitioner or other party alleging the corrupt practice, the agent may be condemned to pay such costs.

Summons to agent.

**2.** In such case the Court or Judges shall order that such agent be summoned to appear, at a time fixed in such summons, in order that it may be determined whether he should be condemned to pay such costs.

If he does not appear.

**3.** If at any time so fixed the agent does not appear, he shall be condemned on the evidence already adduced to pay the whole or a due proportion of the costs awarded to the petitioner or other party aforesaid.

If he appears.

**4.** If he appears, the Court or Judges, after hearing the parties and such evidence as is adduced, shall give such judgment as to law and justice appertains.

Process to recover costs.

**5.** The party to receive the costs shall have process to recover such costs against the agent in like manner as he might have such process against the principal; and no process shall issue against the principal to recover such costs, nor shall the sum be paid out of any money deposited as security, until after the return of process against the agent. 39 V. c. 10, s. 43.

Costs of oral examinations, &c.

**99.** Except where otherwise provided, the costs of any oral examination or cross-examination, or of the production of any

documents, in pursuance of this Act, shall, subject to the discretion of the Court or Judge, be deemed costs in the cause. 36 V. c. 2, s. 38.

**100.** The costs may be taxed in the prescribed manner, but according to the same principles as costs are taxed between solicitor and client in the Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed. 34 V. c. 3, s. 44. Taxation and recovery of costs.

**101.** It shall not be necessary, in any proceedings upon an election petition, to make a Judge's order for the payment of costs a rule of the Court of Appeal, but writs of execution may be issued from the said Court, in pursuance of the said order, in the same manner, and shall have the same force and effect as if the same had been issued in pursuance of a rule of Court. 36 V. c. 2, s. 40; 38 V. c. 3, s. 2. Execution may issue to enforce Judge's order for costs.

**102.** In the event of costs being awarded in favour of a party against any petitioner, such party shall (subject to the provisions of section ninety-eight), after the expiration of thirty days, upon the production of a certificate of taxation from the Registrar of the Court of Appeal, be entitled to receive out of the deposit the amount taxed to him as aforesaid, if the aggregate of the costs taxed against or due the said petitioner (certificates whereof are within the said period of thirty days filed with the said Registrar) does not exceed the deposit; or if the total amount of the said certificates so filed as aforesaid exceeds the deposit, then his proportion thereof; and in the event last aforesaid such party shall be entitled forthwith to issue execution, according to the practice in ordinary cases, for the residue of the costs so taxed to him as aforesaid. 39 V. c. 10, s. 44. Recovery of costs against petitioner.

#### RULES OF COURT.

**103.** The Court of Appeal, or a majority of its Judges, of whom the Chief Justice shall be one, may from time to time make, and may from time to time revoke and alter, General Rules and Orders for the effectual execution of this Act, and of the intention and object thereof, and the regulation of the practice, procedure and costs of election petitions, and the trial thereof, and the certifying and reporting thereon. Court of Appeal may make rules of Court.

**2.** Any General Rules and Orders made as aforesaid, and not inconsistent with this Act, shall be deemed to be within the powers conferred by this Act, and shall, while unrevoked, be of the same force as if they were enacted in the body of this Act.

**3.** Any General Rules and Orders made in pursuance of this section shall be laid before the Legislative Assembly within three Such rules to be laid before

the Legisla-  
ture.

weeks after they are made, if the Legislative Assembly is then sitting, and if the Legislative Assembly is not then sitting, within three weeks after the beginning of the then next Session of the Legislative Assembly. 34 V. c. 3, s. 29; 38 V. c. 3, s. 2.

Practice in  
cases not pro-  
vide 1 for.

**104.** The Rules of Court heretofore in force shall remain in force until abrogated or altered by Rules made in pursuance of this Act; and so far as the Rules from time to time in force do not extend, the principles, practice and rules on which election petitions, touching the election of members to the House of Commons of England, were on the fifteenth day of February, 1871, dealt with, shall, where not inconsistent with this Act, be observed. 34 V. c. 3, s. 30.

#### MISCELLANEOUS.

Power to pun-  
ish for con-  
tempt, and  
enforce rules.

**105.** In any case arising under this Act, any Judge for the time being on the *rota* for the trial of election petitions, or any Judge of the Court of Appeal, shall, for the purpose of enforcing obedience to any rule, or for punishing any contempt whatever, have the same power of granting a writ of attachment, to be issued from the Court of Appeal in vacation, as well as during the sittings of the said Court, as the Court of Queen's Bench has, to enforce obedience to any rule or for punishing any contempt whatever. 36 V. c. 2, s. 39; 38 V. c. 3, s. 2.

Computation  
of time.

**106.** In reckoning time for the purposes of this Act, Sunday and any day set apart by any Act of the Legislature of Ontario for a public holiday, fast or thanksgiving, shall be excluded. 34 V. c. 3, s. 52.

Who may  
practise as  
agent, attor-  
ney or counsel.

**107.** Any person who, according to the law for the time being, is entitled to practise as an attorney or solicitor in Ontario, may practise as an agent or attorney, and any person who, by the law for the time being, is entitled to practise as a barrister-at-law in Ontario, may practise as counsel in cases of election petitions and all matters relating to elections before the Court or a Judge. 36 V. c. 2, s. 41.

Travelling and  
other expenses  
of the Judge  
and Sheriff.

**108.** The travelling and other expenses of the Judge, and all expenses properly incurred by the Sheriff in attending on the Judge, and providing a Court, shall be defrayed out of moneys to be provided by the Legislative Assembly. 34 V. c. 3, s. 32.



## SCHEDULE "A."

*(Referred to in Section 30.)*

## FORM OF AFFIDAVIT ON PRODUCTION OF BOOKS AND PAPERS.

In the Court of Appeal.

Election for \_\_\_\_\_, holden on the \_\_\_\_\_ day of \_\_\_\_\_, A.D.

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say:—

1. That I have in my possession or power the documents relating to the matters in question set forth in the first and second parts of the first Schedule hereto annexed.

2. I object to produce the said documents set forth in the second part of the said first Schedule.

3. *(State upon what grounds objection is made, and verify the facts as far as may be.)*

4. I have had, but have not now in my possession or power the documents relating to the matters in question set forth in the second Schedule hereto annexed.

5. The last mentioned documents were last in my possession or power on *(state when)*.

6. *(State what has become of the last mentioned documents, and in whose possession they now are.)*

7. According to the best of my knowledge, remembrance, information and belief, I have not now, and never had, in my own possession, custody or power, or in the possession, custody or power of my agents or attorneys, agent or attorney, or in the possession, custody or power of any other person on my behalf, any deed, account, book of accounts, minutes, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document or other document whatever, relating to the matters in question, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the first and second Schedules hereto annexed.

Sworn, &amp;c.

36 V. c. 2, Sched.

## SCHEDULE "B."

*(Referred to in Section 81.)*

In the Court of Appeal.

Between { A. B., Petitioner,  
and  
Y. Z., Respondent.

Take notice, that the Petitioner A. B. *(or as the case may be)* intends to appeal to the Honourable \_\_\_\_\_, the Judge appointed to try the



petition in this case, against the decision of Mr. \_\_\_\_\_, the Registrar of the said Judge (*or as the case may be*), as to the vote of *C. D.*, of the \_\_\_\_\_ of \_\_\_\_\_, who appears in the Petitioner's (*or as the case may be*) particulars as No. \_\_\_\_\_ in the \_\_\_\_\_ Schedule, on the following grounds :—

(*State shortly ground or grounds of appeal.*)

Dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18 \_\_\_\_\_.

To \_\_\_\_\_, A. B., Petitioner.  
 Registrar,  
*or to Y. Z.,* \_\_\_\_\_ *or E. F.*  
 Respondent, \_\_\_\_\_ Agent for Petitioner.  
*or W. X.,*  
 Agent for Respondent.

36 V. c. 2, s. 37.

## CHAPTER 12.

### An Act respecting the Legislative Assembly.

- |  |  |
|--|--|
| <p>Legislative Assembly composed of 88 members, s. 1.<br/>         Not to be dissolved by demise of the Crown, s. 2.<br/>         To be quadrennial, s. 3.<br/>         Yearly Sessions, s. 4.<br/>         Persons disqualified as Members—<br/>           Senators, s. 5.<br/>           Privy Councillors, s. 5.<br/>           Members of House of Commons, s. 6.<br/>           Persons holding offices under the Crown or Government, s. 7.<br/>           Public Contractors, s. 8.<br/>         Election of persons disqualified to be void, s. 9.<br/>         Acceptance of Office when to vacate seat, s. 10.<br/>         Penalties for sitting and voting while disqualified, s. 11.<br/>         Affidavit to be made by members elect as to election expenses, s. 12.<br/>         Resignation of Members, &amp;c., and filling vacancies.—<br/>           1. Resignation before meeting of Assembly after a general election, s. 14.<br/>           New election in such cases not to affect right to contest previous election, s. 15.<br/>           New election where election declared void, ss. 16-18.</p> | <p>Person declared not elected not to sit, s. 19.<br/>         Person declared elected may vote, s. 20.<br/>         2. Resignation by member in his place, or by notice to Speaker, s. 22.<br/>         3. Resignation when there is no Speaker, or by the Speaker, s. 23.<br/>         Filling vacancies by death or acceptance of office, ss. 24, 25.<br/>         The Speaker—<br/>           Election, ss. 26, 27.<br/>           Salary, s. 28.<br/>           Duties, s. 29.<br/>           Cases of absence of Speaker, ss. 30-33.<br/>         Powers and Privileges of the Legislative Assembly—<br/>           Compelling attendance of witnesses, ss. 34, 35.<br/>           Protection to persons acting under warrants, &amp;c., s. 36.<br/>           Freedom of speech, s. 37.<br/>           Freedom from arrest, s. 38.<br/>           Exemption from jury service, s. 39.<br/>           Penalty for receiving fees for matters intended to come before the Assembly, ss. 40-42.<br/>           Receiving fees to be a corrupt practice and to vacate seat, ss. 43, 44.</p> |
|--|--|

Powers of Assembly to enquire into and punish certain offences against members—	Punishment for such offences, ss. 46-48.
Assaults, insults, libels, s. 45 (1).	Protection of persons publishing papers printed by order of Assembly, ss. 49, 50.
Obstructing, threatening, s. 45 (2).	Printed Journals to be evidence, s. 51.
Bribery, s. 45 (3).	Other privileges not affected by this Act, s. 52.
Interference with officers, s. 45 (4).	Quorum, s. 53.
Tampering with witnesses, s. 45 (5).	Manner of voting, s. 54.
Giving false evidence, s. 45 (6).	Money votes, s. 55.
Disobeying subpoena, s. 45 (7).	Estate Bills, s. 56.
Presenting false documents, s. 45, (8).	Administration of oaths to witnesses, ss. 57, 58.
Falsifying records, s. 45 (9).	Indemnity to members, ss. 59-68.
Bring action for conduct as a member, s. 45 (10).	
Arresting a member for debt, s. 45 (11).	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The Legislative Assembly shall be composed of eighty-eight members to represent the eighty-eight Electoral Districts mentioned in *The Act respecting the Representation of the People in the Legislative Assembly*. 38 V. c. 2, s. 1. Assembly to consist of 88 members.  
Rev. Stat. c. 8.

2. No Legislative Assembly summoned or called, in and for this Province shall determine or be dissolved by the demise of the Crown, but such Assembly shall continue, and may meet, convene and sit, proceed and act, notwithstanding the demise of the Crown, in the same manner as if such demise had not happened. 32 V. c. 2, s. 1. Legislature not dissolved by demise of the Crown.

2. Nothing in this section shall alter or abridge the power of the Crown to prorogue or dissolve the said Assembly. 32 V. c. 2, s. 2. Power to prorogue or dissolve not affected.

3. Every Legislative Assembly shall continue for four years from the day of the return of the writs for choosing the same and no longer (subject nevertheless to being sooner dissolved by the Lieutenant-Governor). B. N. A. Act, 1867, s. 85. Duration of Legislative Assembly.

4. There shall be a Session of the Legislature once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in one Session and its first sitting in the next. B. N. A. Act, 1867, s. 86. Yearly Session of Legislature.

#### DISQUALIFICATION AS MEMBERS.

5. No Senator, and no Privy Councillor of the Dominion of Canada who is a member of the House of Commons, shall be eligible as a member of the Legislative Assembly, nor shall he sit or vote in the same. 32 V. c. 4, s. 2; 39 V. c. 9, s. 20. No Senator or Privy Councillor eligible.

Members of House of Commons ineligible to be members of the Legislative Assembly.

6. If any person, being a member of the Legislative Assembly, sits or votes as a member of the House of Commons of Canada, his election to the Legislative Assembly shall thereby become void and his seat shall be vacated and he shall become incapable of sitting or voting in the Legislative Assembly, and a writ shall issue for a new election in the manner provided for in the twenty-fourth and twenty-fifth sections of this Act, and such person shall not be eligible for re-election as a member of the Legislative Assembly so long as he continues to be a member of the House of Commons. 35 V. c. 4, s. 1.

Persons holding office, &c., at the nomination of the Crown, &c., ineligible.

7. Except as hereinafter specially provided, no person

(a) Accepting or holding any office, commission or employment either in the service of the Dominion of Canada, or in the service of the Government of Ontario, at the nomination of the Crown or of the Lieutenant-Governor, to which any salary, or any fee, allowance or emolument in lieu of any salary from the Crown or from the Province is attached, or

(b) Accepting or holding any office, commission or employment of profit at the nomination of the Crown, or of the Government, or of any head of a Department in the Government of Ontario, whether such profit is or is not payable out of the public funds,

shall be eligible as a member of the Legislative Assembly, or shall sit and vote in the same during the time he holds such office, commission or employment. 32 V. c. 4, s. 1; B. N. A. Act, 1867, s. 83; 35 V. c. 3, s. 1.

Exception.

2. Nothing in this section shall render ineligible, or disqualify to sit or vote, any person who was on the second day of March, 1872, a member of the Legislative Assembly, and who was at the time of his election holding an office, commission or employment, which would, but for this sub-section, disqualify him. 35 V. c. 3, s. 5.

Exception as to persons holding certain offices.

3. Nothing in this section shall render ineligible as aforesaid, any person being a member of the Executive Council, or holding any of the following offices, that is to say—Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, Commissioner of Agriculture, Commissioner of Public Works or Minister of Education, or shall disqualify him to sit or vote in the Legislative Assembly, provided he is elected while holding such office, and is not otherwise disqualified. 32 V. c. 4, s. 1 (2); 35 V. c. 3, s. 2; 37 V. c. 2, s. 1; B. N. A. Act, 1867, s. 83; 39 V. c. 16, s. 2.

Officers in the Army, Navy or Militia, &c.

4. Nothing in this section shall render ineligible, as aforesaid, or disqualify to sit and vote in the Legislative Assembly, any officer of Her Majesty's Army or Navy, or any officer in the Militia or Militiaman (except officers on the Staff of the Militia receiving permanent salaries), or any Justice of the Peace or

Notary Public, unless he is otherwise disqualified. 32 V. c. 4, s. 1 (3); 35 V. c. 3, s. 2.

8. No person whosoever holding or enjoying, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, any contract or agreement with Her Majesty, or with any public officer or department, with respect to the public service of Ontario, or under which any public money of Ontario is to be paid for any service or work, matter or thing, shall be eligible as a member of the Legislative Assembly, nor shall he sit or vote in the same. 32 V. c. 4, s. 3.

No public contractor eligible.

9. If any person hereby disqualified or declared incapable of being elected a member of the Legislative Assembly, is nevertheless elected and returned as a member, his election and return shall be null and void. 32 V. c. 4, s. 4; 35 V. c. 3, s. 4.

Election of person disqualified to be void.

10. If any member of the Legislative Assembly becomes a member of the Executive Council, or if by accepting any other office or becoming a party to any such contract or agreement as in the eighth section mentioned, he becomes disqualified by law to continue to sit or vote in the Legislative Assembly, his election shall thereby become void, and his seat shall be vacated, and a writ shall, in the manner provided by the twenty-fourth and twenty-fifth sections of this Act, issue for a new election as if he were naturally dead; but he may be re-elected if he be not declared ineligible under this Act. 32 V. c. 4, s. 6; 35 V. c. 3, s. 3.

If member disqualified by accepting office or contract, seat to be vacated.

May be re-elected.

2. Nevertheless, whenever any person holding the office of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, Commissioner of Agriculture, Commissioner of Public Works or Minister of Education, and being at the same time a member of the Legislative Assembly, resigns his office, and within one month after his resignation accepts any other of the said offices, he shall not thereby vacate his seat in the Legislative Assembly, unless the Administration of which such person was a member has resigned, and a new Administration occupies the said offices; or in case a member of the Executive Council holding any one of the said offices, is appointed to hold another office in addition to or in connection with such first mentioned office, he shall not thereby vacate his seat in the Legislative Assembly; and any increase or change of emolument arising from the holding of such two offices shall not cause any vacancy, or render a re-election necessary. 32 V. c. 4, s. 7; 37 V. c. 2, ss. 1 & 2; 39 V. c. 16, s. 3.

Certain officers may resign one office and accept another without vacating.

Acceptance of additional office, no vacation of seat.

11. No person disqualified by this Act or by any other law, to be elected a member of the Legislative Assembly, shall sit

No disqualified person



shall sit or vote.

Penalty.

How recoverable.

or vote in the same while he remains under such disqualification; and if any person by this Act made ineligible as a member of, or declared incapable of sitting or voting in the Legislative Assembly, sits or votes therein while he is so ineligible or incapable, he shall thereby forfeit the sum of two thousand dollars for every day on which he so sits or votes; and such sum may be recovered from him by any person who will sue for the same by action of debt, bill, or information in any Court of competent civil jurisdiction in Ontario. 32 V. c. 4, s. 5; 35 V. c. 3, s. 4; 35 V. c. 4, s. 2.

Proceedings after recovery of judgment.

2. In case any such action, suit or information is brought, and judgment therein is recovered against the defendant, no proceedings shall be had in any other such action, suit, or information against the same person, for any such offence committed before the time of notice to him of the recovery of such judgment. 29 V. c. 1, s. 1.

While action pending no new action to be brought.

3. While any such action, suit or information is pending, no other such action, suit or information shall be brought against the same defendant. 29 V. c. 1, s. 1.

Proceedings in such other action may be stayed and how.

4. The Court wherein any such other action, suit or information is brought, contrary to the intent and meaning of this Act, shall and may, upon the defendant's motion, stay the proceedings therein, if such first mentioned action, suit or information be prosecuted without fraud, and with effect; but no action, suit or information shall be deemed an action, suit or information within this Act, unless so prosecuted. 29 V. c. 1, s. 1.

#### OATH AS TO ELECTION EXPENSES.

Member elect before taking oath as member to file affidavit as to election expenses, &c.

12. Before any member elect of the Legislative Assembly is permitted to take the oath as a member, he shall file with the Clerk of the House, an affidavit duly sworn before such Clerk, that (except in respect of his personal expenses) he has not made before, or during, or after the election, and will not make any payment, advance, loan, or deposit for the purposes of the election, otherwise than through his agent or agents duly appointed by him under "*The Election Act*;" and such affidavit shall state the name, or names of the agent, or agents, theretofore appointed, and shall further state that the deponent has not been guilty of any corrupt practice in respect of the said election, and may be in the form of Schedule A to this Act, or to the like effect. 38 V. c. 3, s. 6.

Rev. Stat. c. 10, s. 183.

#### RESIGNATION OF MEMBERS AND FILLING VACANCIES.

Members may resign their seats.

13. Any member of the Legislative Assembly may voluntarily resign and vacate his seat in the manner hereinafter provided. 32 V. c. 4, s. 9.



**14.** If any person returned as elected to the Legislative Assembly for one or more constituencies at a general election, wishes to resign his seat or any one of his seats, before the first meeting of the said Assembly thereafter, he may address, or cause to be addressed, to any two members elect of the said Assembly, a declaration of his intention to resign the seat, made in writing under his hand and seal before two witnesses; and such two members, upon receiving such declaration, shall forthwith address their warrant, under their hands and seals, to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member in the place of the member so notifying his intention to resign, and such writ shall issue accordingly; and the member so tendering his resignation shall be held to have vacated the seat, and shall cease to be a member of the said Assembly in respect to the seat so vacated. 35 V. c. 2, s. 1.

Resignation of seats by members before meeting of the Assembly.

**2.** But no member elect shall so tender his resignation for a seat in respect of which his election is lawfully contested, nor until after the expiration of twenty-one days from the time the return of his election was made to the Clerk of the Crown in Chancery. 35 V. c. 2, s. 2.

When resignation may be tendered.

**15.** The election to be held under such writ shall not in any manner affect the right of any person entitled to contest the previous election and claim the seat; and the Judge or Judges trying such previous election shall determine whether the member, who has so resigned, or any other person was duly returned or elected thereat; which determination, if adverse to the return of such member, and in favour of any other candidate, shall avoid the election held under the fourteenth section, and the candidate declared duly elected at the previous election shall be entitled to take his seat as if no such subsequent election had been held. 35 V. c. 2, s. 3.

New election not to affect the right to contest previous election

**16.** Forthwith after the receipt by the Speaker, or, in case there is no Speaker, by the Clerk of the House, of a certificate of the Judge determining any election petition and certifying that the election was void, the Speaker or Clerk, as the case may be, shall address his warrant under his hand and seal to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member for the constituency the election for which has been certified to be void, and such writ shall issue accordingly. 35 V. c. 2, s. 4.

Issue of writ for new election.

**17.** The Speaker shall forthwith after the receipt of any certificate from the Judge determining any election petition, communicate the same to the Clerk for his guidance as to the persons entitled to take the oath and sign the roll as members. 35 V. c. 2, s. 8.

Speaker to notify to Clerk who are entitled to take the oath, etc.

**18.** The proceedings taken under the four preceding sections by the Speaker or Clerk shall be reported by the Speaker to the

Proceedings to be reported to

Legislative  
Assembly.

Legislative Assembly at the earliest practicable time, and shall be forthwith entered on the Journals of the Legislative Assembly. 35 V. c. 2, s. 5.

Persons de-  
clared not  
elected not to  
sit or vote.

19. In case any person returned as elected is, by the certificate of the Judge appointed to try an election petition in respect of the election, determined not to have been duly returned or elected, such person shall not thereafter sit or vote in that Legislative Assembly. 35 V. c. 2, s. 6.

Persons de-  
clared elected  
by Judge may  
sit and vote.

20. In case any person, other than the person returned as elected, is by the certificate of the Judge appointed to try an election petition determined to have been duly returned or elected, such person shall thereupon be entitled to sit and vote in the Legislative Assembly. 35 V. c. 2, s. 7.

Writ not to  
issue during  
session.

21. No writ shall issue under any of the provisions of the seven next preceding sections during a Session of the Legislative Assembly. 35 V. c. 2, s. 9.

Resignation by  
member in his  
place.

22. Any member wishing to resign his seat, may do so by giving in his place in the Legislative Assembly notice of his intention to resign it, in which case and immediately after such notice has been entered by the Clerk on the Journals of the Legislative Assembly, the Speaker shall address his warrant under his hand and seal, to the Clerk of the Crown in Chancery, for the issue of a writ for the election of a new member in the place of the member resigning. 32 V. c. 4, s. 10 (1).

Or by notice in  
writing to the  
Speaker.

2. Or such member may address and cause to be delivered to the Speaker a declaration of his intention to resign his seat, made in writing under his hand and seal before two witnesses, which declaration may be so made and delivered either during a Session of the Legislature, or in the interval between two Sessions; and the Speaker shall, upon receiving such declaration, forthwith address his warrant, under his hand and seal to the Clerk of the Crown in Chancery, for the issue of a writ for the election of a new member in the place of the member so resigning, and a writ shall issue accordingly; and an entry of the declaration so delivered to the Speaker shall be thereafter made in the Journals of the Legislative Assembly. 32 V. c. 4, s. 10 (2).

Seat vacated  
on such notice.

3. The member so tendering his resignation shall be held to have thereby vacated his seat, and to have ceased to be a member of the Legislative Assembly. 32 V. c. 4, s. 10 (3).

No member to  
resign con-  
tested seat.

4. But no member shall so tender his resignation while his election is lawfully contested, nor, until after the expiration of the time during which it may by law be contested, on other grounds than corruption or bribery. 32 V. c. 4, s. 11.

**23.** If any member of the Legislative Assembly wishes to resign his seat in the interval between two Sessions of the Legislature, and there is then no Speaker, or if such member is himself the Speaker, he may address and cause to be delivered to any two members of the said Assembly, the declaration before mentioned of his intention to resign, and such two members, upon receiving such declaration, shall forthwith address their warrant under their hands and seals to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member in the place of the member so notifying his intention to resign, and such writ shall issue accordingly; and the member so tendering his resignation shall be held to have vacated his seat and shall cease to be a member of the said Assembly. 32 V. c. 4, s. 12.

Proceedings where a member wishes to resign where there is no Speaker, or the member is himself the Speaker.

**24.** If any vacancy happens in the Legislative Assembly, by the death of any member, or by his accepting any office, commission or employment, or by his becoming a party to any contract as mentioned in the eighth section of this Act, the Speaker, on being informed of such vacancy by any member of the said Assembly in his place, or by notice in writing under the hands and seals of any two members of the said Assembly, shall forthwith address his warrant to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member to fill the vacancy, and a new writ shall issue accordingly. 32 V. c. 4, s. 13.

Proceedings in case of vacancy by death or acceptance of office.

**2.** If when such vacancy happens, or at any time thereafter, before the Speaker's warrant for a new writ has issued, there is no Speaker of the said Assembly, or the Speaker is absent from the Province, or if the member whose seat is vacated is himself the Speaker, then any two members of the said Assembly may address their warrant under their hands and seals to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member to fill such vacancy, and such writ shall issue accordingly. 32 V. c. 4, s. 13 (2).

Proceedings when Speaker is absent from Ontario, or there is no Speaker.

**25.** A warrant may issue under the hands and seals of any two members elect of the Legislative Assembly to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member of the Legislative Assembly, to fill any vacancy arising subsequently to a general election and before the first meeting of such Assembly thereafter, by reason of the death or other of the causes aforesaid, and such writ may issue at any time after such vacancy. 32 V. c. 4, s. 14.

Warrant for filling a vacancy before Legislative Assembly meets after a general election.

**2.** The election to be held under such writ shall not in any manner affect the rights of any person entitled to contest the previous election; and the report of any Court or Judge appointed to try such previous election shall determine whether the member who has so died or whose seat has become so vacant as aforesaid, or any other person, was duly returned or elected thereat, which determination, if adverse to the return

Election being contested not affected.

of such member and in favour of any other candidate, shall avoid the election held under this section, and the candidate declared duly elected at the previous election shall be entitled to take his seat as if no such subsequent election had been held. 32 V. c. 4, s. 14 (2).

SPEAKER OF THE LEGISLATIVE ASSEMBLY.

Election of  
Speaker of  
Legislative  
Assembly.

**26.** The Legislative Assembly on its first assembling after a general election, shall proceed with all practicable speed to elect one of its members to be Speaker. B. N. A. Act, 1867, ss. 44 & 87.

As to filling up  
vacancy in  
office of  
Speaker.

**27.** In case of a vacancy happening in the office of Speaker, by death, resignation, or otherwise, the Legislative Assembly shall with all practicable speed proceed to elect another of its members to be Speaker. B. N. A. Act, 1867, ss. 45 & 87.

Speaker's  
salary.

**28.** A salary of one thousand dollars per annum shall be payable to the Speaker of the Legislative Assembly. 33 V. c. 3, s. 12.

Speaker to  
preside.

**29.** The Speaker shall preside at all meetings of the Legislative Assembly. B. N. A. Act, 1867, ss. 46 & 87.

Provision in  
case of absence  
of Speaker.

**30.** In case of the absence for any reason of the Speaker from the chair of the Legislative Assembly for a period of forty-eight consecutive hours, the House may elect another of its members to act as Speaker, and the member so elected shall during the continuance of such absence of the Speaker have and execute all the powers, privileges, and duties of Speaker. B. N. A. Act, 1867, ss. 47, 87.

In case of ill-  
ness, etc., of  
the Speaker,  
he may call on  
any member  
to take the  
chair *pro tem*.

**31.** Whenever, from illness or other cause, the Speaker finds it necessary to leave the chair during any part of the sittings of the said Assembly on any day, he may call upon any member thereof to take the chair and to act as Speaker during the remainder of such day unless the Speaker himself resumes the chair before the close of the sittings for that day; and the member so called upon shall take the chair and act as Speaker accordingly. 31 V. c. 2, s. 1.

In what case  
the Assembly  
may elect a  
Speaker for  
the day.

**32.** Whenever the Speaker, from illness or other unavoidable cause, cannot be present at the meeting of the Assembly on any day, it shall be lawful for the said Assembly to elect a member to take the chair and preside as Speaker for that day. 31 V. c. 2, s. 2.

Acts and Or-  
ders of the As-  
sembly in such  
cases to be  
effectual.

**33.** Every Act passed, and every Order made and thing done by the said Assembly while such member is acting or presiding as Speaker as aforesaid, shall be as valid and effectual, to all intents and purposes, as if done while the Speaker himself was presiding in the chair. 31 V. c. 2, s. 3.



## POWERS AND PRIVILEGES OF THE LEGISLATIVE ASSEMBLY.

**34.** The Legislative Assembly may, at all times, command and compel the attendance before such Assembly, or before any Committee thereof, of such persons, and the production of such papers, and things as the Assembly or Committee may deem necessary for any of its proceedings or deliberations. 39 V. c. 9, s. 1.

Power to com-  
pel attendance  
of witnesses,  
etc

**35.** Whenever the said Legislative Assembly requires the attendance of any persons before the said Assembly or before any Committee thereof, the Speaker may issue his warrant or subpœna, directed to the persons named in the Order of the said Legislative Assembly, requiring the attendance of such persons before the said Legislative Assembly or a Committee thereof, and the production of such papers and things as may be ordered. 39 V. c. 9, s. 2.

Speaker's war-  
rant for attend-  
ance, etc.

**36.** No person shall be liable, in damages or otherwise, for any act done under the authority of the Legislative Assembly, and within its legal power, or under or by virtue of any warrant issued under such authority: all such warrants may command the aid and assistance of all Sheriffs, bailiffs, constables, and others, and every refusal or failure to give such aid or assistance when required shall be an infringement of this Act. 39 V. c. 9, s. 3.

Protection of  
persons acting  
under  
authority.  
Warrants may  
command aid.

**37.** No member of said Assembly shall be liable to any civil action or prosecution, arrest, imprisonment, or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the said Assembly. 39 V. c. 9, s. 4.

Freedom of  
speech and  
action by  
members.

**38.** Except for any breach of this Act, no member of said Assembly shall be liable to arrest, detention or molestation for any debt or cause whatever of a civil nature within the legislative authority of this Province, during any Session of the Legislature, or during the twenty days preceding or the twenty days following such Session. 39 V. c. 9, s. 5.

Freedom from  
arrest.

**39.** During the periods mentioned in the preceding section all members, officers and employees of said Assembly, and all witnesses, summoned to attend before the same or any Committee thereof, shall be exempt from serving or attending as jurors before any Court of Justice in this Province. 39 V. c. 9, s. 6.

Freedom of  
members and  
officers from  
serving as  
jurors.

**40.** No member of the Legislative Assembly shall knowingly accept or receive, either directly or indirectly, any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted or intended to be submitted to the

Members not  
to receive fees,  
for drafting  
bills, etc.



consideration of the said Assembly or of any Committee thereof.  
39 V. c. 9, s. 7.

Barristers,  
etc., being  
partners of  
members, not  
to receive fees  
for drafting  
bills, etc.

Penalty for  
violation of ss.  
40 and 41 ;

**41.** No barrister, solicitor or attorney who, in the practice of his profession, is a partner of any member of the Legislative Assembly, shall accept or receive, either directly or indirectly, any fee, compensation or reward as aforesaid. 39 V. c. 9, s. 8,

**42.** Any person wilfully violating the provisions of the two preceding sections of this Act shall be subject to a penalty of five hundred dollars over and above the amount or value of the fee, compensation or reward accepted or received by him, to be paid with full costs of suit to any one who will sue therefor, one half thereof to be paid to the person so suing and the other half to Her Majesty for the public uses of this Province. 39 V. c. 9, s. 9.

Breach of s. 40,  
to be deemed  
a corrupt  
practice.

**43.** Any violation of the fortieth section shall be deemed a corrupt practice, and an election petition setting up the same may be filed within six months after the offence in the same manner, and the proceeding thereupon and the effect of every judgment, report and order therein shall be the same as in the case of other election petitions. 39 V. c. 9, s. 15.

and seat of  
member guilty  
of a violation  
of s. 40 to be  
vacated.

**44.** In case judgment is recovered against any member of the Legislative Assembly for any penalty under the forty-second section of this Act, or in case, by a resolution of the said Assembly, it is declared that a member thereof has been guilty of a violation of the fortieth section of this Act, or in case on the trial of an election petition filed within six months from the alleged violation, it is found by the Judge trying such petition that a member has committed a violation of the fortieth section of this Act, the election of such member shall thereby become void, and the seat of such member shall be vacated, and a writ shall issue for a new election as if he were naturally dead, and the said member shall *ipso facto* be incapable of being elected to or of sitting in the Legislative Assembly during the then existing House of Assembly. 39 V. c. 9, s. 10.

Legislative  
Assembly to  
have jurisdiction  
to try cer-  
tain matters.

**45.** The said Assembly shall have all the rights and privileges of a Court of Record for the purpose of summarily enquiring into and punishing, as breaches of privilege or as contempt of Court (without prejudice to the liability of the offenders to prosecution and punishment criminally or otherwise according to law, independently of this Act), the acts, matters and things following :—

Assaults, in-  
sults, libels,

1. Assaults, insults or libels upon members of the Legislative Assembly during the Session of the Legislature and twenty days before and after the same ;

threats,

2. Obstructing, threatening or attempting to force or intimidate members of said Assembly ;

3. The offering to or the acceptance of a bribe by any member of said Assembly to influence him in his proceedings as such, or the offering to or acceptance of any fee, compensation or reward by any such member for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted to or intended to be submitted to the said Assembly or any Committee thereof; bribe and offering of fee,

4. Assaults upon or interference with officers of said Assembly, while in the execution of their duty; interference with officers,

5. Tampering with any witness in regard to evidence to be given by him before said Assembly, or any Committee thereof; tampering with witness,

6. Giving false evidence or prevaricating or otherwise misbehaving in giving or refusing to give evidence or produce papers before the said Assembly or any Committee thereof; false evidence,

7. Disobedience to subpoenas or warrants issued under the authority of this Act to compel the attendance of witnesses before the said Assembly or any of its Committees; disobedience to subpoena,

8. Presenting to said Assembly or to any Committee thereof, any forged or falsified document, with intent to deceive such Assembly or Committee; presenting false documents,

9. Forging, falsifying or unlawfully altering any of the records of said Assembly, or of any Committee thereof, or any document or petition presented or filed or intended to be presented or filed before said Assembly or Committee, or the setting or subscribing, by any person, of the name of any other person to any such document or petition with intent to deceive; falsifying records, etc.

10. The bringing of any civil action or prosecution against, or the causing or effecting of any arrest or imprisonment of any member of said Assembly in any civil proceeding, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion, or otherwise, or said by him before said Assembly; bringing action or arresting for conduct as member.

11. The causing or effecting of the arrest, detention, or molestation, of any member of said Assembly for any debt or cause whatever of a civil nature, during any Session of the said Assembly, or during the twenty days preceding or the twenty days following such Session Arresting for debt, etc.

And for the purpose of this Act, the said Assembly is hereby declared to possess all such powers and jurisdiction as may be necessary or expedient for enquiring into, judging and pronouncing upon the commission or doing of any such acts, matters or things, and awarding and carrying into execution, the punishment thereof provided for by this Act. 39 V. c. 9, s. 11. Jurisdiction given as to enquiring and punishing.

Punishment  
for contraven-  
tion of s. 45.

**46.** Every person who, upon any such enquiry, appears to have committed or done any of the acts, matters, or things, in the section forty-five mentioned, in addition to any other penalty or punishment to which he may by law be subject, shall be liable to an imprisonment for such time, during the Session of the Legislative Assembly then being held, as may be determined by the Legislative Assembly. 39 V. c. 9, s. 12.

Proceeding on  
contravention  
of s. 45, and  
arrest therefor.

**47.** Whenever the Legislative Assembly declares that any person has been guilty of a contempt for any of the acts, matters and things in section forty-five set forth, and directs such person to be taken into custody or to be imprisoned, the Speaker shall issue his warrant to the Sergeant-at-Arms, attending the House, or to the keeper or governor of the Common Gaol in the County of York, to take such person into custody and to keep and detain him in custody in accordance with the order of the said Legislative Assembly in that behalf. 39 V. c. 9, s. 13.

Decision of  
Legislative  
Assembly to  
be final.

**48.** The determination of the Legislative Assembly upon any proceeding under this Act and within the legislative authority of this Province shall be final and conclusive. 39 V. c. 9, s. 14.

Protection of  
persons pub-  
lishing papers,  
etc., by order  
of Legislative  
Assembly.

**49.** In case of any civil proceeding or prosecution against any person for, or on account, or in respect of the publication of any copy of any report, paper, votes or proceedings, printed by order of said Assembly, the defendant, at any stage of the proceedings, may lay before the Court or Judge such report, paper, votes or proceedings, and such copy, with an affidavit verifying such report, paper, votes or proceedings and the correctness of such copy, and that such report, paper, votes or proceedings were printed and published by order of the said Legislative Assembly; and the Court or Judge shall immediately stay such civil proceeding, and the same, and every writ or process issued therein, shall be, and shall be deemed to be, finally put an end to, determined and superseded by virtue of this Act. 39 V. c. 9, s. 16.

Protection of  
persons  
publishing  
abstracts of  
papers printed  
by order of  
Legislative  
Assembly.

**50.** It shall be lawful in any civil proceeding against any person for printing any extract from or abstract of any such report, paper, votes or proceedings, to give in evidence, under the general issue or denial, such report, paper, votes or proceedings, and to show that such extract or abstract was published *bona fide* and without malice, and if such is the opinion of the Court or of the Jury, as the case may be, judgment shall be rendered, or a verdict shall be entered for the defendant. 39 V. c. 9, s. 17.

Printed copies  
of Journals to  
be evidence.

**51.** In any such proceeding, any copy of the Journals of the Legislative Assembly, printed or purporting to be printed by the order of the same, shall be admitted as evidence of such

Journals by all Courts, Justices and others, without any proof being given that such copies were so printed. 39 V. c. 9, s. 18.

**52.** Except so far as is provided in the fortieth section of this Act, nothing herein shall be construed to deprive the Legislative Assembly, or any Committee or member thereof, of any rights, immunities, privileges or powers which the said Assembly, Committee or member might, but for this Act, have been entitled to exercise or enjoy. 39 V. c. 9, s. 19.

Act not to abridge privileges, etc., inherent in Legislative Assembly or its members.

#### QUORUM AND MANNER OF VOTING.

**53.** The presence of at least twenty members of the Legislative Assembly shall be necessary to constitute a meeting of the Legislative Assembly for the exercise of its powers; and for that purpose the Speaker shall be reckoned as a member. B. N. A. Act, 1867, ss. 48 & 87.

Quorum of Legislative Assembly.

**54.** Questions arising in the Legislative Assembly shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote. B. N. A. Act, 1867, ss. 49 & 87.

Voting in Legislative Assembly.

#### MONEY VOTES.

**55.** The Legislative Assembly shall not originate or pass any vote, resolution, address or bill for the appropriation of any part of the Consolidated Revenue Fund, or of any other tax or impost, to any purpose which has not been first recommended by a message of the Lieutenant-Governor to the said Legislative Assembly during the Session in which such vote, resolution, address or bill is proposed. 32 V. c. 27, s. 1.

Appropriation of any part of Consolidated Revenue Fund to be first recommended by Lieutenant-Governor.

#### ESTATE BILLS.

**56.** The Lieutenant-Governor in Council may, from time to time, issue commissions to the Judges of the Courts of Appeal, Queen's Bench, Chancery and Common Pleas, empowering them, or any two of them, to report under the Rules and Orders of the Legislative Assembly, to the said Assembly, in respect to any estate bills, or petitions for estate bills, which may be submitted to the said Assembly. 38 V. c. 7, s. 1.

Lieut.-Governor may issue Commissions to Judges to report on estate bills.

#### OATHS TO WITNESSES.

**57.** Any standing or select Committee of the Legislative Assembly may require that facts, matters and things relating to the subject of enquiry be verified or otherwise ascertained by the oral examination of witnesses, and may examine such

Committees of Legislative Assembly may examine on oath



witnesses upon oath, and for that purpose the Chairman or any member of such Committee may administer an oath, in the form of Schedule B to this Act, to any such witness. 32 V. c. 5, s. 1 ; 35 V. c. 5, s. 1.

Affidavits to be used by committee, before whom to be made.

**58.** Where witnesses are not required to be orally examined before such Committee, any oath, affirmation, declaration, or affidavit in writing, which is required to be made or taken by or according to any rule or order of the Legislative Assembly, or by the direction of any such Committee, and in respect to any matter or thing pending or proceeding before such Committee, may be made, and taken before the Clerk of the House, the Clerk of any such Committee, or any Commissioner for taking affidavits in any of the Superior Courts. 35 V. c. 5, s. 2.

#### INDEMNITY TO MEMBERS.

Allowance to members for attendance at any Session.

**59.** In each Session of the Legislative Assembly there shall be allowed to each member of the Legislative Assembly attending at such Session, six dollars for each day's attendance, if the Session does not extend beyond thirty days, and if the Session extends beyond thirty days, then there shall be payable to each member attending at such Session, a sessional allowance of such sum as may from time to time be appropriated for the purpose. 33 V. c. 3, s. 1 ; 40 V. c. 7, *Sched. A* (8).

Deductions for non-attendance.

What shall be reckoned as days of attendance.

**60.** A deduction at the rate of four dollars per day shall be made from the said sessional allowance for every day on which the member does not attend a sitting of the House, or of some Committee thereof, provided the House sits on such day ; but each day during the Session, after the first on which the member attends as aforesaid, on which there has been no sitting of the House, in consequence of its having adjourned over such day, or on which the member was in the place where the Session was held, but was prevented by sickness from attending any such sitting as aforesaid, shall be reckoned as a day of attendance at such Session, for the purposes of this Act, and a member shall, for the purposes aforesaid, be held to be at the place where the Session is held whenever he is within ten miles of such place. 33 V. c. 3, s. 2.

Allowance for less than thirty-one days' attendance.

**61.** A member shall not be entitled to the said sessional allowance for less than thirty-one days' attendance, reckoned as aforesaid, but his allowance for any less number of days shall be six dollars for each day's attendance. 33 V. c. 3, s. 3.

How the compensation shall be payable.

**62.** The said compensation may be paid from time to time, as the member becomes entitled to it, to the extent of four dollars for each day's attendance as aforesaid, but the remainder shall be retained by the Clerk of the House until the close of the Session, when the final payment shall be made. 33 V. c. 3, s. 4.



**63.** If any person is from any cause a member of the Legislative Assembly for a part only of any Session, then, provided he is a member for upwards of thirty days during such Session, he shall be entitled to the sessional allowance hereinbefore mentioned, subject to the deduction aforesaid, for non-attendance as a member, and also to a deduction of four dollars for each day of such Session before he was elected, or after he ceased to be a member; but if he is a member for only thirty days or less, then he shall be entitled only to six dollars for each day's attendance at such Session, whatever be the length thereof. Where a person is a member for only part of the Session. 33 V. c. 3, s. 5.

**64.** There shall be also allowed to each member ten cents for each mile of the distance between the place of residence of such member and the City of Toronto, reckoning such distance going and coming according to the nearest mail route, which distance shall be determined and certified by the Speaker. Allowance for mileage. 33 V. c. 3, s. 6.

**65.** The sum due to each member at the close of any Session shall be calculated and paid to him by the Clerk of the House, on his making and signing before the Clerk or Accountant of the House, or a Justice of the Peace, a solemn declaration, to be kept by the Clerk, stating the number of days' attendance and the number of miles of distance according to the nearest mail route, as determined and certified by the Speaker, for which such member is entitled to the said allowance, and the amount of such allowance, after deducting the number of days (if any) which are to be deducted under any preceding section of this Act; and such declaration may be in the form of Schedule C. hereunto annexed, and shall have the same effect as an affidavit in the same form. Final payment at the close of Session. Declaration to be made by members. 33 V. c. 3, s. 7.

**66.** There is hereby granted to Her Majesty, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of this Province, an annual sum sufficient to enable Her Majesty to advance to the Clerk of the Legislative Assembly such sums as are required to pay the estimated amounts of the sessional allowance hereinbefore mentioned. Grant for paying the allowance. 33 V. c. 3, s. 8.

**67.** The Clerk of the Legislative Assembly shall account for all moneys received by him under this Act, in the same manner as for moneys advanced to him for the contingent expenses of the said Legislative Assembly, and he may apply any surplus thereof to the payment of such contingent expenses, and may supply any deficiency of such estimated amount out of any moneys in his hands applicable to the payment of such contingent expenses. Clerk to account for moneys received by him. 33 V. c. 3, s. 9.

**68.** The nine next preceding sections may be cited as "*The Members' Indemnity Clauses*" of this chapter. Short mode of citing. See 33 V. c. 3, s. 13.

## SCHEDULE "A."

*(Referred to in Section 12.)*

## FORM OF MEMBER'S OATH AS TO EXPENSES OF ELECTION.

I, \_\_\_\_\_ of the  
 in the County of \_\_\_\_\_, elected to represent the Electoral  
 District of \_\_\_\_\_ (as the case may be,) in the Legislative  
 Assembly of the Province of Ontario, make oath and say :—That, except  
 in respect of my personal expenses, I have not made, before, during or  
 since the election, any payment, advance, loan, or deposit for the pur-  
 poses of the election last held for the said Electoral District otherwise than  
 through A. B. and C. D., my agents duly appointed under "*The Election  
 Act*;" and that I will not hereafter make any payment, loan or deposit  
 in respect of the said election, except through an agent or agents appointed  
 under the said Act. I further say, that I have not been guilty of any  
 corrupt practice in respect of the said election.

Sworn before me, this \_\_\_\_\_

day of \_\_\_\_\_

A.D. 18 \_\_\_\_

Clerk of the Legislative Assembly  
 of the Province of Ontario.

38 V. c. 3, s. 6.

## SCHEDULE "B."

*(Referred to in Section 57.)*

## FORM OF OATH TO BE ADMINISTERED.

The evidence you shall give to this Committee touching the subject of  
 the present enquiry shall be the truth, the whole truth, and nothing but  
 the truth : So help you God.

32 V. c. 5, *Sched.*

## SCHEDULE "C."

*(Referred to in Section 65.)*

## DECLARATION TO OBTAIN SESSIONAL ALLOWANCE.

I, A. B., one of the members of the Legislative Assembly, solemnly  
 declare that I reside at \_\_\_\_\_, in \_\_\_\_\_, which is distant by the  
 nearest mail route \_\_\_\_\_ miles, as determined by the Speaker of the  
 Legislative Assembly, from the City of Toronto, where the Session of the  
 Legislative Assembly of Ontario, which began on the \_\_\_\_\_ day of  
 \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, was held.

That the first day during the said Session on which I was present at

Toronto, where the said Session was held, was the                      day of  
                                , one thousand eight hundred and                      .

That on the said day, and on each day of the said Session, after the said day, on which there was a sitting of the said Legislative Assembly, I attended such sitting, or a sitting of some Committee thereof,\* except only on days,\*\* on , of which I was prevented

by sickness from attending as aforesaid, though I was then present at the said City of Toronto.\*\*\*

(Signature) A. B.

Declared before me at                      the                      day of                      ,  
one thousand eight hundred and                      .

J. N.

Clerk (or Accountant) of the Legislative Assembly,  
or Justice of the Peace for the  
of (as the case may be).

*If the member attended a sitting of the House, or of some Committee, on every sitting day after the first on which he so attended, omit the words from \* to \*\*\*; and if his non-attendance was not on any day occasioned by sickness, omit the words from \*\* to \*\*\*.*

*If the person making the declaration became or ceased to be a member after the commencement of the Session, vary the form so as to state correctly the facts upon which the sum due to the member is to be calculated.* 33 V. c. 3. Schedule.

## TITLE IV.

### EXECUTIVE GOVERNMENT AND PUBLIC OFFICERS.

---

CHAP. 13.—Lieutenant-Governor and Deputies, p. 200.

“ 14.—Executive Council, p. 201.

“ 15.—Public Officers, p. 202.

“ 16.—Sheriffs, p. 212.

“ 17.—Inquiries concerning Public Matters, p. 225.

“ 18.—Publication of Official Notices, p. 226.

---

### CHAPTER 13.

#### An Act respecting the Lieutenant-Governor and his Deputies.

---

Lieut.-Governor to be a corporation sole, s. 1.

Deputies for executing marriage licenses, money warrants, &c., s. 2.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Lieutenant-Governor to be a corporation sole.

**1.** The Lieutenant-Governor and his successors, shall be a corporation sole;—and all bonds, recognizances, and other instruments by law required to be taken to him in his public capacity, shall be taken to him and his successors, by his name of office, and may be sued for and recovered by him or his successors, by his or their name of office as such;—and the same shall not in any case go to or vest in the personal representatives of the Lieutenant-Governor, during whose government the same were so taken. C. S. C. c. 10, s. 1.

Lt.-Governor may appoint Deputies for certain purposes.

**2.** The Lieutenant-Governor may, with the advice and consent of the Executive Council, from time to time appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of the Province, for the purpose of executing marriage licenses, money warrants and commissions under any Act of the Legislature of Ontario. 39 V. c. 8. s. 1; 40 V. c. 7, *Sched. A* (9).

## CHAPTER 14.

## An Act respecting the Executive Council.

Of whom composed, s. 1.

Executive Officers, s. 2.

Duties of Executive Councillors, s. 3.

Executive Councillor not to be member of House of Commons, s. 4.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. The Executive Council shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit ; but shall not at any time consist of more than six members. B. N. Ontario. Composition of Executive Council of Ontario.  
A. Act, 1867, s. 63 ; 35 V. c. 3, s. 3.

2. The Lieutenant-Governor may appoint under the Great Seal of the Province from among such persons as may be appointed members of the Executive Council the following officers to hold office during pleasure, that is to say :—an Attorney-General, a Secretary and Registrar of the Province, a Treasurer of the Province, a Commissioner of Crown Lands, a Commissioner of Agriculture, a Commissioner of Public Works, and a Minister of Education ; and may by Order in Council, from time to time, prescribe the duties of those officers and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof ; and (subject to the provisions of the first section) may also appoint other and additional officers to hold office during pleasure, and may from time to time prescribe the duties of those officers, and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof. B. N. Appointment of Executive Officers.  
A. Act, 1867, s. 134. 39 V. c. 16. s. 2.

3. Any of the powers and duties which have been heretofore, or may be hereafter, assigned by law to any of the officers now constituting, or who may hereafter constitute, the Executive Council, may, from time to time, by Order in Council, be assigned and transferred, either for a limited period or otherwise, to any other of the said officers by name or otherwise. 37 V. c. 2, s. 3 ; 39 V. c. 16, s. 2. Duties of members of Executive Council may be assigned to other members.

4. If any member of the Executive Council of Ontario, whilst he holds such office, sits or votes as a member of the House of Commons of Canada, he shall thereby forfeit his said office of Executive Councillor, and his appointment as such Executive Councillor shall from thenceforth be and become null and void, and he shall be incapable of being reappointed to or holding the office of Executive Councillor of Ontario so long as he is a member of the House of Commons of Canada. 32 V. c. 4, s. 8. Executive Councillor sitting or voting in House of Commons to forfeit his office, etc.



## CHAPTER 15.

## An Act respecting Public Officers.

Commissions continued on demise of the Crown, ss. 1, 2.  
 Oath of allegiance, form and administering of, ss. 3-7.  
 Sacramental test not required as qualification for office, s. 8.  
 Security by public officers, ss. 9-27.  
   Nature of security, s. 9.  
   Record of bonds, ss. 10, 11.  
   Forfeiture of office for failure to give security, s. 12.  
   New security to be given on death, &c., of surety, s. 13.  
   Relief of surety desiring to withdraw, s. 14.  
   Remission of penalties, s. 15.

Formal defects, ss. 16-20.  
 Act not to affect cases otherwise provided for, ss. 21, 22.  
 Statement of bonds to be made to Legislative Assembly, s. 23.  
 Guarantee Companies as security, s. 24.  
 Security of Sheriffs, Registrars, Division Court Clerks, and Bailiffs, s. 25.  
 Affidavits of justification, &c., may be made before a Justice of the Peace, s. 26.  
 Limitation of liability of sureties of public officer, s. 27.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

## COMMISSIONS ON DEMISE OF THE CROWN.

No new Commissions need be issued at the commencement of a new reign, but a proclamation continuing all public officers, etc., in their respective offices, shall issue and be sufficient.

1. Upon the demise of the Crown, it shall not be necessary to renew any commission, by virtue whereof any public officer or functionary in this Province held his office or profession, during the previous reign, but a proclamation shall be issued by the Lieutenant-Governor, authorizing all persons in office who held commissions under the late Sovereign, and all functionaries who exercised any profession by virtue of any such commissions, to continue in the due exercise of their respective duties, functions and professions, and such proclamation shall suffice, and the incumbents shall, as soon thereafter as may be, take the usual and customary oath of allegiance before the proper officer or officers thereunto appointed.

Oath of allegiance to the Sovereign to be taken.

2. Such proclamation being issued and oath taken, every such public officer and functionary shall continue in the lawful exercise of the duties and functions of his office or profession, as fully as if appointed *de novo* by commission derived from the Sovereign for the time being; and all acts and things *bona fide* done and performed by such incumbents in their respective offices, and in the due and faithful performance of their duties and functions, between the time of such demise and

Acts done by such public officers, etc., to be valid.

the proclamation so to be issued (such oath of allegiance being always duly taken), shall be deemed to be legally done and valid accordingly. C. S. C. c. 12, s. 1.

2. Nothing in the next preceding section shall prejudice or in anywise affect the rights or prerogatives of the Crown with respect to any office or appointment derived or held by authority from it, nor prejudice nor affect the rights or prerogatives thereof in any other respect whatsoever. C. S. C. c. 12, s. 2.

Saving the rights of the Crown.

#### OATHS OF ALLEGIANCE AND OFFICE, ETC.

3. It shall not be necessary for any person appointed to any civil office in this Province, or any Mayor or other officer or member of any Corporation therein, or for any person admitted, called or received as a Barrister, Notary Public, Attorney or Solicitor, to make any declaration or subscription, or to take or subscribe any other oath than the oath following, that is to say :

No other oath but those hereinafter prescribed to be required of certain officers.

"I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, (*or the reigning Sovereign for the time being,*) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province dependent on and belonging to the said Kingdom, and that I will defend Her to the utmost of my power against all traitorous conspiracies or attempts whatever which may be made against Her Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to Her Majesty, Her Heirs or Successors, all treasons or traitorous conspiracies and attempts which I may know to be against Her or any of them ;—And all this I do swear without any equivocation, mental evasion or secret reservation : So help me God."

Oath of allegiance.

and also such oath for the faithful performance of the duties of his office or for the due exercise of his profession or calling as may be required by any law in that behalf. C. S. C. c. 12, s. 3.

Oath for faithful performance of duties.

4. The form hereinbefore set forth, and no other, shall be that of the oath of allegiance to be administered to and taken by every person in this Province who, either of his own accord or in compliance with any lawful requirement made on him or in obedience to the directions of any statute of the Legislature of this Province, desires to take an oath of allegiance. C. S. C. c. 12, s. 4.

The said form and no other to be that to be used in all cases in this Province.

5. All Magistrates and other officers lawfully authorized, either by virtue of their office or by special commission from the Crown for that purpose, may administer the oath of allegiance in any part of this Province. C. S. C. c. 12, s. 4.

Who may administer it.

6. The oath of allegiance herein before set forth, together with the oath of office or oath for the due exercise of any pro-

Oath to be taken within.

the time  
now by law  
provided, etc.

fession or calling, shall be taken within the period, and in the manner, and subject to the disabilities and penalties for the omission thereof, by law provided with respect to such oaths, in all such cases respectively. C. S. C. c. 12, s. 5.

Affirmation  
instead of oath  
in certain  
cases.

7. All persons allowed by law to affirm instead of swearing in civil cases in any part of this Province, shall be received to take an affirmation of allegiance in the like terms, *mutatis mutandis*, as the said oath of allegiance, and such affirmation of allegiance taken before the proper officer, shall in all cases be accepted from such persons in lieu of such oath; and shall as to such affirmants have the like effect as the said oath of allegiance; And all Magistrates and other officers lawfully authorized, either by virtue of their office or by special commission from the Crown for that purpose, may administer the affirmation of allegiance in any part of this Province. C. S. C. c. 12, s. 6.

Its effect.

By whom it  
may be  
administered.

#### SACRAMENTAL TEST NOT REQUIRED.

No person  
need take the  
Sacrament as  
a qualification  
for any office.

8. It shall not be necessary for any person, for the purpose of qualifying himself to hold office in this Province, or for any other temporal purpose, privilege or advantage whatsoever within the same, to receive the Sacrament of the Lord's Supper according to the rites or usages of the Church of England, or to deliver a certificate or make proof of his having received the said Sacrament in manner aforesaid; and no person shall within this Province, be subject to any penalty, forfeiture, incapacity or disability whatsoever, for or by reason of his not having so taken or received the said Sacrament. C. S. C. c. 12, s. 7.

No penalty  
incurred for  
not taking it.

#### SECURITY BY PUBLIC OFFICERS.

Persons  
appointed to  
public offices  
to give  
security.

9. Every person appointed to any civil office or employment, or commission in any public department of the Government of this Province, or to any office or employment of public trust, or wherein he is concerned in the collection, receipt, disbursement or expenditure of any public money under the Government of this Province, and who by reason thereof is required to give security, with a surety or sureties, or otherwise, shall, within one month after notice of such appointment, if he is then in Ontario, or within three months, if he is then absent from Ontario (unless he sooner arrives in Ontario, and then within one month after such arrival), give and enter into a bond or bonds, or other security or securities, in such sum, and with such sufficient surety or sureties as may be approved of by the Lieutenant-Governor, or by the principal officer or person in the office or department to which he is appointed, for the due performance of the trust reposed in him, and for his duly accounting for all public moneys entrusted to him or placed under his control. 32 V. c. 29, s. 2.

10. Every person who, by reason of his appointment to any civil office or employment, or commission in any public department, or of public trust, as aforesaid, or who, by reason of being concerned in the collection, receipt, disbursement or expenditure of any public moneys, as aforesaid, gives or enters into any bond or other security for the due performance of the trust reposed in him, or for the due accounting for of public money entrusted to him, shall cause every such bond or security to be proved, as to the due execution thereof, by an affidavit of the attesting witness in the form of Schedule A annexed to this Act, made before a Justice of the Peace.

Affidavit of execution.

2. Every surety in any such bond, shall make an affidavit of justification in the form of Schedule B, hereto annexed, before a Justice of the Peace.

Affidavit to be made by sureties.

3. The person by or on whose behalf any such bond or security is entered into or given, shall cause the same, with the said affidavits thereto annexed, to be recorded at full length in the office of the Secretary and Registrar of this Province, in manner hereinafter mentioned, and shall, forthwith after such registration, deposit the original bond or security, and the said affidavits thereto annexed, in the office of the Treasurer of the Province. 32 V. c. 29, s. 3; 40 V. c. 7, *Sched. A* (10).

Bonds, how and where to be recorded and deposited.

4. Every such bond or security, and the said affidavits thereto annexed, shall be recorded and deposited, as aforesaid, within one month after being entered into or given, if the person on whose behalf it is entered into or given resides or is in Ontario; and if he is absent from Ontario, then within three months after being entered into or given, unless such person arrives sooner in Ontario, and then within one month after such arrival. 32 V. c. 29, s. 3 (2).

Time within which it is to be done.

11. The Secretary and Registrar of the Province shall make an entry, and shall, if required, give a certificate in writing under his hand of every such bond or security brought to him to be registered as aforesaid, and therein shall mention the day on which such bond or security is so registered, expressing also in what book, page or number the same is recorded. 32 V. c. 29, s. 4 (1).

Entry of bond and certificate thereof.

2. For the purpose of so registering bonds or securities under this Act, the said Secretary and Registrar shall provide a separate register book, every page of which, and every bond or security recorded therein, shall be numbered; and the day of the month and year when every such bond or security is registered shall be entered in the margin of the said register book, and in the margin of the bond or security. 32 V. c. 29, s. 4 (2).

Separate book to be kept for the purpose.

3. The said Secretary and Registrar shall keep separate alphabetical lists of the names of the principals and of the names of the sureties mentioned in such bonds or securities, with re-

Alphabetical lists of names of principals, etc.



ference to the book, page or number where the bonds or securities containing such names are to be found, and shall enter and register the said bonds or securities in the same order of time in which they respectively come to his hands. 32 V. c. 29, s. 4 (3).

Commission may be declared avoided for non-compliance.

**12.** If any person who, by reason of his appointment to or holding any such civil office or employment, or commission in any public department, or of public trust as aforesaid, or who, by reason of being concerned in the collection, receipt, disbursement or expenditure of any public money as aforesaid, is required or bound to give any such security, or to register and deposit any such bond or security as aforesaid, neglects to give such security, or to cause such bond or security to be duly registered and deposited in the manner and within the period in this Act prescribed, he shall be liable to forfeit the appointment, office, employment or commission, in respect whereof such security ought to have been given, and such bond or security, registered and deposited as aforesaid; and his appointment or commission shall be void from and after the time when the Lieutenant-Governor declares the same to be avoided under this Act; but such avoidance shall not annul or make void any act, order or other matter or thing done by such person during the time he actually held such appointment, office, employment or commission. 32 V. c. 29, s. 5 (1).

Avoidance not to annul acts done.

No forfeiture if delay caused by loss of bond

2. No such forfeiture shall take place by reason of any such bond or security not being registered or deposited, where the proper sureties have been given and the proper bond made out, and when the failure to register or deposit has arisen from the loss of such bond or security in the transmission thereof from a distance; but in every such case a new bond or security, specifying the reason of such delay, shall be made out and signed, registered and deposited, within the like period after the person giving such security receives notice of the loss (regard being had to the place where he then is), as is required by this Act for the registry thereof if such loss had not occurred. 32 V. c. 29, s. 5 (2).

Notice to be given of death, &c., of surety.

**13.** Every such person as aforesaid, who has given any bond or other security, with a surety or sureties for the due execution of the trust reposed in him, or for duly accounting for public moneys coming to his hands, shall give notice in writing to the Secretary and Registrar of this Province, or to the principal officer or person of the department to which he belongs, of the death, bankruptcy, insolvency or residence out of this Province of any surety or person bound for or with him in any such security.

Time for giving notice.

2. Such notice shall be given within one month after the fact comes to the knowledge of such person as aforesaid, if he then is or resides in this Province, or within three months if he is out of Ontario, unless he sooner arrives in Ontario, and

then within one month after such arrival; and any person who neglects to give such notice within such period as aforesaid shall forfeit to the use of Her Majesty one-fourth part of the sum for which the surety so dead, or bankrupt, or insolvent, or resident out of this Province became security, to be recovered in any Court of competent jurisdiction by action of debt or information at the suit of the Crown.

Penalty.

3. Every such person who, upon the death, bankruptcy, insolvency, or residence out of this Province of any surety, neglects to give the security of another surety, to be approved in like manner as such surety dying or becoming bankrupt, insolvent or resident out of this Province, was approved within such period from his having given notice of the death, bankruptcy or insolvency, or residence out of this Province, of the former surety as is by this Act limited for giving, registering and depositing the original security, or neglects to register and deposit the bond or security of such new surety, within such period from his having given the security of such new surety as is by this Act limited for the registering and depositing of the original bond or security (the same regard being had to the place in which the person may then be), shall be liable to forfeit the appointment, office, employment or commission, in respect whereof such new security ought to have been given, and such new bond or security registered and deposited as aforesaid; and his appointment or commission shall be void from and after the time when the Lieutenant-Governor declares the same to be avoided, in like manner, and under and subject to such provisions as aforesaid. 32 V. c. 29, s. 6.

Neglect to provide new surety punishable by forfeiture of office.

14. Where any person has become surety to the Crown for the due accounting for public moneys, or the proper performance of any public duty by any such person as aforesaid, such surety, when no longer disposed to continue such responsibility, may give notice thereof to his principal, and also to the Secretary and Registrar of this Province; and all accruing responsibility on the part of such person as such surety shall cease at the expiration of three months from the receipt of the last of such notices; and the principal shall, within that period, give the security of another surety, and register and deposit the bond of such new surety, or, in default of so doing, shall be liable to forfeit and be deprived of the appointment, office, employment or commission, in respect whereof such new security ought to have been given, and such new bond or security registered and deposited as aforesaid; and his appointment or commission shall be void from and after the time when the Lieutenant-Governor declares the same to be avoided, in like manner, and under and subject to such provisions as aforesaid. 32 V. c. 29, s. 7.

How sureties may relieve themselves from further responsibility.

15. The Lieutenant-Governor in Council may remit the forfeiture or penalty in any case in which the failure to give secu-

Lieut.-Governor may remit

penalty in certain cases ;

or to register and deposit any bond or security under this Act, has not arisen from any wilful neglect of the person bound to give, register or deposit the same.

or may extend time for giving security, &c. ;

2. If it appears to the Lieutenant-Governor that the period hereinbefore limited for giving the security of a new surety as aforesaid is, in consequence of particular accidents, casualties or circumstances, insufficient, or that by reason of the distance or loss of letters, or illness, or the refusal of any surety to give the security, or of such surety not being deemed eligible and being rejected, or any other accident or casualty, further time will be necessary to enable the security of such new surety to be given, the Lieutenant-Governor in Council may allow such further period for giving the security of such new surety as appears to him reasonable and proper ;

but not more than two months, and an entry there- of must be made.

3. But such extended period shall in no case exceed two months beyond the period allowed by this Act ; and the precise period proposed to be allowed, together with the special grounds for allowing the same, shall be either entered in the book in which the original security has been registered, or endorsed on the back of the original bond or other security itself ; and the person required to give the security of such new surety shall not be subject to any forfeiture or penalty for not giving the same within the time limited by this Act, if he gives it within the extended period so allowed as aforesaid. 32 V. c. 29, s. 8.

Security may be approved, although given after time limited.

16. The Lieutenant-Governor may approve of the security given by any public officer or the affidavit of justification made by his sureties and filed by him, although the same has been given or filed after the time limited by this Act ; and in such case, the office or commission of such public officer shall be deemed not to have been avoided by such default, but to have remained and to remain in full force and effect. 32 V. c. 29, s. 9. See 40 V. c. 7, *Sched. A* (10).

Acts not void by delay in giving security, &c.

17. No act of any public officer of this Province whose security has been given, or registered, or deposited, or the affidavit of justification of whose sureties has been filed after the time limited by this Act, shall, by such default, be void or voidable. 32 V. c. 29, s. 10. See 40 V. c. 7, *Sched. A* (10).

Securities executed at different times, within what time to be registered.

18. Where the securities of the principal and sureties have been executed at different times (whether they were taken in one and the same bond, deed or other instrument, or in different ones), the period limited for registering and depositing such securities shall be estimated from the time of execution thereof by the person who was the last to execute the bond, deed or other instrument, or the last bond, deed or other instrument, as the case may be. 32 V. c. 29, s. 11.

**19.** No neglect, omission or irregularity in giving or receiving the bonds or other securities, or in registering the same, within the periods or in the manner prescribed by this Act, shall vacate or make void any such bond or security, or discharge any surety from the obligations thereof. 32 V. c. 29, s. 12.

Neglect, etc. not to vacate bond or discharge surety.

**20.** All bonds or other securities hereby required to be registered and deposited, shall be registered and deposited by the proper officer, notwithstanding the period prescribed for registering and depositing the same has expired; but no such registering and depositing of any such bond or other security shall be deemed to waive any forfeiture or penalty, or shall exempt the person on whose behalf the same are registered and deposited, from any forfeiture or penalty, under any of the provisions of this Act. 32 V. c. 29, s. 13.

Proper officer to register and deposit bonds, although time expired, but not to exempt from penalty.

**21.** Nothing in any of the preceding sections of this Act shall apply to or affect any officer of any department, with respect to which special provision is made by law for the giving of security by its officers and the exacting of security from them, unless such special provision does not extend or apply to such officer. 32 V. c. 29, s. 14.

Not to affect cases where special provision made.

**22.** Nothing in the preceding sections of this Act, shall be construed to apply to any Treasurer or other officer having the control or management of moneys levied and applied for municipal or local purposes. 39 V. c. 17, s. 5.

Municipal treasurers.

**23.** The Secretary and Registrar of this Province shall cause to be prepared, for the information of the Legislative Assembly of this Province, within fifteen days after the opening of every Session thereof, a detailed statement of all bonds or securities registered as aforesaid in his office, and of any changes or entries that have been made in reference to the names and residences of any sureties, and of the amounts in which they have become severally liable, since the period of the previous return submitted to the said Legislative Assembly. 32 V. c. 29, s. 15.

Statement of bonds to be laid before Legislature.

**24.** Whenever a Sheriff, Registrar, Division Court Clerk or Bailiff, or any other public officer, is required to give security for the performance of his duties, or other security of a like nature, and whether such security enures for the benefit of the Crown or of any person injured by the default or misconduct of such officer, the Lieutenant-Governor in Council may, by Order in Council, direct that the bond or policy of guarantee of any incorporated or joint stock company empowered to grant guarantees, bonds, covenants or policies for the integrity and faithful accounting of public officers, or other like purposes, and named by such Order in Council, may be accepted as such security, upon such terms as may be determined by the Lieutenant-Governor in Council; and the provisions of

Certain public officers may give security of guarantee companies.



law with reference to the legal effect of such securities when given by individuals, to the filing thereof, and to the mode of proceeding thereon, shall apply to the security given by every such Company.

2. The interim receipt of such company may be accepted in lieu of the formal security, but the formal security shall be completed within one month. 32 V. c. 29, s. 16; 36 V. c. 6, s. 4; 38 V. c. 22, s. 1; 40 V. c. 7, *Sched. A* (11).

Securities by  
Sheriffs,  
Registrars,  
Division  
Court Clerks  
and Bailiffs,  
and suits  
thereon by  
the Crown.

**25.** Every covenant hereafter entered into for or in behalf of a Sheriff, Registrar, Division Court Clerk or Bailiff aforesaid, in pursuance of any statute requiring security from any of such officers, or in pursuance of the preceding section, shall enure for the benefit of Her Majesty; and Her Majesty may bring and maintain an action thereon in respect of any damages suffered by Her Majesty or by the public on account of any misconduct, neglect or default of the officer in either instance, with the like effect as any private person suffering damages as aforesaid might, and may also sue in any other mode by which Her Majesty may sue upon a covenant, 39 V. c. 17, s. 7.

Affidavits of  
justification  
and of execu-  
tion may be  
made before a  
Justice of  
Peace or Com-  
missioner.

**26.** Wherever by any Act of the Legislature of this Province, any person appointed to any public office, or authorized to perform any official duties is required to give or enter into any bond or other security for the proper performance of his duties, any affidavit of qualification or justification required to be made by such person or by the sureties in any such bond, and any affidavit of the due execution of any such bond or security, may be made before a Justice of the Peace, or before a Commissioner authorized to take affidavits to be used in the Superior Courts. 39 V. c. 17, s. 6. *See* 27-8 V. c. 28, s. 50; 39 V. c. 14, s. 13; and 40 V. c. 7, *Sched. A* (10).

Limitation as  
to liability of  
sureties of  
public officers.

**27.** Where any person, company or corporation is surety for the performance by a Sheriff, Registrar of Deeds, or Clerk or Bailiff of a Division Court, or by any other public officer, or by any person appointed to any civil office, employment or commission in any public department in the Government of this Province, or to any office or employment of public trust, whether the suretyship is for the benefit of the Crown or enures for the benefit of any person injured by the default or misconduct of such officer or other person, and any action or suit is brought upon the bond, covenant or recognizance of suretyship, no damages shall be recovered in the said action or suit against such surety except as to matters and causes of action which have arisen within ten years next before the commencement of the said action or suit. 39 V. c. 17, s. 1

SCHEDULE A.

(Section 10.)

AFFIDAVIT OF EXECUTION.

County of

I, G.

H.

Province of Ontario.

make oath and say as follows :—

} of the

} in the County of

of

1. I am the person whose name is subscribed to the annexed bond as the attesting witness (*or*, one of the attesting witnesses) to the execution thereof, and the signature set and subscribed thereto as such attesting witness is of my proper handwriting, and my name and addition are correctly above set forth.
2. I was present and did see the said bond duly signed and executed by the several parties thereto (*or*, by A, B. and C. D. two of the parties executing the same, *or as the case may be*).

3. I am well acquainted with all the said parties (*or*, with the said A. B. and C. D.)

Sworn before me at

Counties) of

, 18 .

G. H.

, in the County (*or*, United

, this

day of

E. F.,

J.P. for the County of

or Commissioner for taking affidavits, &c.

32 V. c. 29, Sched. B.

SCHEDULE B.

(Section 10.)

AFFIDAVIT OF JUSTIFICATION.

County of

I, A.

B.

one

Province of Ontario.

make oath and say as follows :—

} of the

} of the

sureties in the annexed bond named,

1. I am seised and possessed to my own use of real (*or*, real and personal) estate in the Province of Ontario, of the actual value of (*the amount for which the party has become liable on the bond*) dollars, over and above all charges and incumbrances affecting the same.
2. (*Where the party has real estate*). The said real estate consists of (*describing the property*).
3. I am worth (*the amount for which the party has become liable in the bond*) dollars over and above my just debts.
4. My post office address is as follows : (*insert the name of the post office.*)

A. B.

Sworn before me at

of

, this

, in the County (*or* United Counties)

day of

, 18 .

C. D.,

J. P. for the County of

or Commissioner for taking affidavits, &c.

32 V. c. 29, Sched. A ; 40 V. c. 7, Sched. A (12).

## CHAPTER 16.

## An Act respecting the Office of Sheriff.

Appointment, s. 1.  
 Oath, s. 2.  
 Security, ss. 3-24.  
 Sheriff forfeiting office, to act till a successor appointed, s. 25.  
 Duties, &c., of Sheriffs and like officers, not to trade, s. 26.  
 Nor purchase at sales under execution, s. 27.  
 Misconduct of Bailiffs, Constables, &c., ss. 28, 29. and 27-8 V. c. 28, s. 31.  
 Liability for an escape, s. 30.  
 Forfeiture of office for false returns, s. 31.  
 Proceedings to compel returns in case of refusal, ss. 32, 33.  
 Holidays in Sheriffs' offices, s. 34.  
 Books to be kept, ss. 35, 36.

Quarterly returns of fines levied, s. 37.  
 Duties at Nisi Prius, s. 38.  
 Recovery of fees, ss. 39-41.  
 Provisions in case of separation of a Union of Counties, ss. 42, 43.  
 Books, &c., to be the property of Government, s. 44.  
 Penalty on person not delivering books to a Sheriff's successor, s. 45.  
 Proceedings upon removal or death of Sheriff, s. 46.  
 Sheriff resigning, may inspect books, &c., formerly in his possession, s. 47.  
 Execution of conveyances in case of death, &c., of Sheriffs who sold lands, s. 48.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Appointment of Sheriffs and filling of vacancies.

1. The Lieutenant-Governor shall, from time to time, as occasion may require, by commission under the Great Seal of the Province, appoint a fit and proper person to the office of Sheriff of each County, and shall in like manner fill up any vacancy occurring by the death, removal, resignation or forfeiture of office by any Sheriff; but every such Sheriff shall hold office during pleasure only. 27-8 V. c. 28, s. 2.

Oaths to be taken by, on appointment.  
 Rev.Stat. c.15.

2. Every Sheriff, before he enters upon the duties of his office, shall take and subscribe the oath of allegiance, in the form given in section three of *The Act respecting Public Officers*, and also the oath of office in the form of Schedule A. to this Act, and shall not be bound nor required to subscribe or take any other oath, nor make any other declaration or subscription, except as hereinafter provided; and every such oath respectively shall be filed in the office of the Clerk of the Peace for the County to which it relates. 27-8 V. c. 28, s. 4.

Amount of security to be given, how determined.

3. The Lieutenant-Governor in Council may, from time to time, by Order in Council, fix and determine the amount of the security to be given by each Sheriff as hereinafter mentioned; but such

amount shall be in no case less than four thousand dollars, nor more than twenty thousand dollars for the Sheriff, and not less than two thousand dollars, nor more than ten thousand dollars for each surety named in the covenant hereinafter mentioned, where there are two sureties, and not less than one thousand dollars, nor more than five thousand dollars for each surety, where there are four sureties named in the said covenant. 27-8 V. c. 28, s. 5.

Amount limited.

4. Subject to the provisions of the twenty-fourth section of *The Act respecting Public Officers*, every Sheriff shall, before he is sworn into office, and within one month after his appointment, execute and enter into a joint and several covenant in duplicate, with two or four sureties, for such amounts respectively as may be fixed and determined by Order in Council in that behalf as aforesaid; which said duplicate covenant may be in the form of Schedule B. to this Act, or to the like effect; and to each of said duplicate covenants respectively, shall be attached an affidavit made by each of the covenantors therein named respectively, in the form of Schedule C to this Act, or to the like effect. 27-8 V. c. 28, s. 6; 40 V. c. 7, *Sched. A* (13).

Duplicate covenant to be entered into.  
Rev. Stat. c. 15, s. 24.

Form

Affidavit of sufficiency by each of the covenantors.

Form.

5. One of the duplicate covenants, with the affidavits thereto attached, shall, within the periods hereinbefore limited respectively, be filed in the office of the Clerk of the Peace of the County, for which filing the Clerk shall be entitled to a fee of fifty cents, and the other duplicate covenant, with the affidavits attached to the same respectively, and an affidavit of the filing of such first-mentioned duplicate and affidavits in the office of the Clerk of the Peace as aforesaid, shall, within the same periods respectively, be transmitted to the office of the Provincial Secretary, and by him be submitted for the approval of the Lieutenant-Governor in Council. 27-8 V. c. 28, s. 7.

Where one covenant shall be filed

Affidavit of filing.

6. In case the said covenant is approved of by the Lieutenant-Governor in Council, it shall be forthwith deposited in the office of the Treasurer of the Province, and notice of such approval shall be given to the Sheriff by the Provincial Secretary; but in case the said covenant is disapproved of by the Lieutenant-Governor in Council, the Provincial Secretary shall forthwith give notice to the Sheriff of such disapproval, and in such case the said Sheriff shall, within one month thereafter, furnish and transmit another such covenant in lieu of the covenant so disapproved of as aforesaid, to the satisfaction of the Lieutenant-Governor in Council.

Where the other to be deposited after approval by Lieutenant-Governor. Proviso: in case of disapproval.

2. The sureties named in any covenant so disapproved of as aforesaid shall not be discharged from liability by such disapproval, but shall be and continue liable for any defaults or misfeasances made, done or committed previous to the approval by

Sureties not discharged by non-approval.



the Lieutenant-Governor in Council of any securities that may be furnished in lieu of the same. 27-8 V. c. 28, s. 8.

Renewal of security.

7. The Lieutenant-Governor in Council may at any time require any Sheriff to renew his covenants or securities, or to furnish others in lieu of the same, as to him may appear expedient for the protection of the interests of the Crown or of parties to legal proceedings, which new or substituted covenants or securities the Sheriff shall be bound to transmit to the Provincial Secretary within three months after notice of the Order in Council in that behalf. 27-8 V. c. 28, s. 9.

Form of renewed security.

8. Every renewed or substituted covenant or security shall be in the same form, and executed and accompanied by the same formalities and affidavits, and subject to the same approval as the original covenants or security. 27-8 V. c. 28, s. 10.

Liability of former sureties in case of renewal.

9. In case any new security is given or substituted as aforesaid, the former sureties shall only be liable for or on account of defaults and misfeasances suffered or committed by the Sheriff previous to the perfecting of the new security and the approval thereof by the Lieutenant-Governor in Council, and not as to any subsequent default or misfeasance. 27-8 V. c. 28, s. 11.

Sheriff need not be dismissed for inability to justify as to security.

10. In case any Sheriff has given the security and made the affidavit of justification required to be made under section four of this Act, but has subsequently to his appointment, on account of loss of property or of additional security being required, become unable to make an affidavit of justification in accordance with the provisions of section eight of this Act, this Act shall not be construed as rendering necessary the dismissal of such Sheriff from his office, but he shall, under pain of forfeiture of his said office, be required to furnish such additional security as the Lieutenant-Governor in Council may in consequence of such inability consider requisite. 36 V. c. 6, s. 2.

Further security may be given.

In case of the death, insolvency, etc., of any surety.

11. Every Sheriff shall give notice in writing, to the Provincial Secretary, of the death, discharge, bankruptcy, insolvency, or residence out of the Province, of any surety or person bound with him in any such security, within one month after the fact comes to his knowledge; and in every such case such Sheriff shall furnish the security of a new surety, to be approved of as aforesaid, in lieu of the surety so dying, being discharged, becoming bankrupt or insolvent, or residing without this Province, and shall complete and transmit to the Provincial Secretary the necessary covenants or security and affidavits in that behalf, within one month after such notice. 27-8 V. c. 28, s. 12.

Surety may decline to

12. Any person who has become surety for any Sheriff, and who is no longer disposed to continue such responsibility,

may gave notice thereof to such Sheriff and to the Provincial Secretary, and in such case the said Sheriff shall furnish the security of a new surety, in lieu of the surety so giving notice, and shall complete and transmit the necessary covenants or security and affidavits in that behalf to the Provincial Secretary, within one month after such notice; and all accruing responsibility on the part of the person giving such notice shall cease upon and after the perfecting and approval of the new security. 27-8 V. c. 28, s. 13.

continue such  
at any time.

**13.** Any Sheriff who neglects to give and furnish any of the securities, or to give any notice required by this Act, within the period hereinbefore in that behalf respectively limited, shall be liable to forfeit his said office, and his appointment and commission shall be void from and after the time when the Lieutenant-Governor declares the same to be avoided under this Act, but such avoidance shall not annul or make void any act or order or other matter or thing done by such Sheriff during the time he actually held such office. 27-8 V. c. 28, s. 14.

Forfeiture for  
neglect on the  
part of a  
Sheriff to fur-  
nish security.

**14.** The Lieutenant-Governor in Council may remit the forfeiture in any case in which the failure to give the security or to perfect or transmit the instruments required by this Act, within the periods hereinbefore limited respectively in that behalf, has not arisen from the wilful neglect of the Sheriff, and if it appears to the Lieutenant-Governor that such respective periods are in any case insufficient in consequence of any accident, casualty, loss of papers in the transmission thereof, illness or other particular circumstance, the Lieutenant-Governor in Council may allow such further period, not in any case exceeding two months, for perfecting and transmitting such securities as to him may appear reasonable and proper. 27-8 V. c. 28, s. 15.

In what case  
forfeiture may  
be remitted.

**15.** The Lieutenant-Governor may approve of any security or securities, although the same may not have been perfected and transmitted respectively within the time limited by this Act, and in such case the office or commission of the Sheriff shall not be deemed to have been avoided by such default, but to have remained in full force and effect; and such securities, when approved of as aforesaid, shall be held and construed to be valid and effectual, in the same manner and to the same extent as if they had been perfected and approved respectively within the time limited by this Act. 27-8 V. c. 28, s. 16.

Case of securi-  
ties approved,  
although not  
perfected in  
time.

**16.** No neglect, omission or irregularity in giving or renewing any covenant or security required by this Act, nor in observing the formalities hereinbefore prescribed, or any of them, shall vacate or make void any such covenant or security, or discharge any party or surety from the obligations thereof. 27-8 V. c. 28, s. 17.

Neglect, omis-  
sion, &c., in  
giving bonds  
not to avoid  
them.

Addition to or diminution of territory to which bond relates, not to affect it.

**17.** No such covenant or security shall be in anywise impaired, discharged or avoided, nor shall any Sheriff or any surety named therein be released, exonerated or acquitted from the obligation assumed thereby, by reason of the addition to the original area of the County to which it relates, of any other territory, or by the separation therefrom of any portion of such original area, by legislative authority or otherwise. 27-8 V. c. 28, s. 18.

Examination of Sheriff's covenant allowed.

**18.** Any person may examine the covenant of the Sheriff and his sureties, and the Clerk in possession thereof shall, on demand, deliver to any person who desires the same a copy thereof, on payment of the following fees :

For search and examination of covenant..... \$0 25  
For copy of covenant..... 1 00

27-8 V. c. 28, s. 19.

Liability of sureties.

**19.** The said sureties shall be liable to indemnify the party or parties to any legal proceeding against any omission or default of the Sheriff in not paying over moneys received by him, and against any damage sustained by any such party or parties in consequence of the Sheriff's wilful or neglectful misconduct in his office, and the Sheriff shall be joint defendant in any action to be brought upon such covenant. 27-8 V. c. 28, s. 20.

Actions upon the covenant against Sheriff for misconduct, etc.

**20.** Any person sustaining any damage by reason of any such default or misconduct of any Sheriff may bring and maintain an action upon the said covenant for such default or misconduct, and such action shall not be barred by reason of any prior recovery by the same party upon the same covenant, or of any judgment rendered for the defendant in any prior action upon the same covenant, or by reason of any other action being then depending upon the same, either at the suit of the same plaintiff or of any other party, for any other distinct cause of action. 27-8 V. c. 28, s. 21.

If the surety has not become liable for the full amount of his covenant, &c.

**21.** If upon the trial of any action upon any such covenant or security it is made to appear that the plaintiff is entitled to recover, and that the amount which such surety has paid or become liable to pay, as hereinafter mentioned, is not equal to the full amount for which he became surety, the Court, after deducting from such full amount the sums which he has so paid or become liable to pay as aforesaid, shall render judgment against him for any sum not exceeding the balance of the sum for which he became surety. 27-8 V. c. 28, s. 22.

Sureties not liable for more than amount stated in bond.

**22.** Where any such surety actually and *bona fide* and of his own proper moneys and effects has paid or become liable by virtue of a judgment or judgments recovered against him upon

his said covenant to pay an amount equal to the amount specified on the said covenant for which he became surety, such covenant shall as to him be deemed to be discharged and satisfied, and no other or further sum shall be recovered against him. 27-8 V. c. 28, s. 23.

23. It shall be competent for any Court of Record in Ontario, upon proof, to the satisfaction of the Court, of such payment or liability, in a summary manner and at any stage of the cause, by stay of proceedings or otherwise, to prevent the recovery against any such surety of any further sum than the amount specified in his covenant, and for which he may have become surety. 27-8 V. c. 28, s. 24.

Recovery of more than amount stated, how prevented.

24. Upon every writ of execution under a judgment recovered on such covenant, the plaintiff or his attorney shall, by an endorsement on the writ, direct the Coroner or other officer charged with the execution of such writ to levy the amount thereof upon the goods and chattels of the Sheriff in the first place, and in default of goods and chattels of the Sheriff to satisfy the amount, then to levy the same or the residue thereof of the goods and chattels of the other defendant or defendants in such writ, and so in like manner with any writ against lands and tenements upon a judgment on any such covenant. 27-8 V. c. 28, s. 25.

How the amount shall be levied.

25. Notwithstanding a Sheriff may have forfeited his office and become liable to be removed therefrom by reason of his not having complied with the provisions of this Act, he shall nevertheless continue in his office to all intents and purposes, and the liability of himself and his sureties shall remain, until a new Sheriff has been appointed and sworn into office. 27-8 V. c. 28, s. 28.

Sheriff forfeiting his office to act till his successor is appointed.

26. No Sheriff or Deputy Sheriff shall directly or indirectly keep a shop, or trade, or traffic, or sell or expose for sale, any goods, wares or merchandize, either by wholesale or retail, or maintain any action for the price of any goods so sold, except only such as by the duties of his office he is legally commanded or empowered to sell. 27-8 V. c. 28, s. 29.

Sheriff, &c., not to trade.

27. No Sheriff, Deputy Sheriff, Bailiff or Constable shall directly or indirectly purchase any goods or chattels, lands or tenements by him exposed to sale under execution. 27-8 V. c. 28, s. 30.

Sheriff, &c., not to purchase at sales under execution.

28. If any Bailiff or Constable entrusted with the execution of any writ, warrant, process, mesne or final, wilfully misconducts himself in the execution of the same, or wilfully makes any false return to such writ, warrant or process, unless by the consent of the party in whose favour the process issued, he shall answer in damages to any party aggrieved by such misconduct or false return. 27-8 V. c. 28, s. 31.

Misconduct of Bailiff or Constable.

Damages.



[Section 31 of 27-8 V. c. 28 is as follows:—

**Misconduct of Bailiff or Constable to be misdemeanor.** 31. If any Bailiff or Constable entrusted with the execution of any writ, warrant or process, mesne or final, shall wilfully misconduct himself in the execution of the same, or wilfully make any false return to such writ, warrant or process, unless by the consent of the party in whose favour the process may have issued, he shall be guilty of a misdemeanor, and upon conviction thereof before any Court of competent jurisdiction, shall be liable to fine and imprisonment, in the discretion of the Court, and shall answer in damages to any party aggrieved by such misconduct or false return.

**Damages.†**

*This section is also applicable to Coroners and Elisors employed in the service or executing of the process of any of the Superior or County Courts. See 27-8 V. c. 28, s. 45.]*

**Certain sections to apply to Coroners and Elisors.** 29. The twenty-seventh and twenty-eighth sections of this Act shall extend and apply to Coroners and Elisors employed in the service or executing of the process of any of the Superior Courts, or of the County Courts. 27-8 V. c. 28, s. 45.

**Sheriff, &c., not to be liable in debt for escape.** 30. If any debtor in execution escapes out of legal custody, the Sheriff, Bailiff, or other person having the custody of such debtor, shall be liable only to an action upon the case for damages sustained by the person or persons at whose suit such debtor was taken or imprisoned, and shall not be liable to any action for debt in consequence of such escape. 34 V. c. 12, s. 7. *See also Rev. Stat. c. 67, s. 33.*

**Forfeiture of office for false returns.** 31. Any Sheriff who wilfully makes any false return upon any writ or a warrant of execution directed to him and placed in his hands for execution, unless by consent of both parties to the same, shall be liable to forfeit his office. 27-8 V. c. 28, s. 26.

**Refusal by Deputy to return writ, etc., to Sheriff, to be treated as a contempt of Court.** 32. Every Deputy Sheriff, Bailiff, or other Sheriff's officer or clerk, entrusted with the custody of any writ or process, or of any book, paper or document belonging to the said Sheriff or his office, shall, upon demand upon him by such Sheriff, restore and return such writ, process, book, paper or document to the custody of the said Sheriff, and in case of any neglect or refusal to return or restore the same as aforesaid, the party so neglecting or refusing may be required by an order of any Court of Record in Ontario, or of any Judge of such Court, to return and restore such writ, process, book, paper or document to such Sheriff, and may be further proceeded against by attachment, as in other cases of contumacy to orders or rules of Court. 27-8 V. c. 28, s. 32.

**Proceedings to compel delivery.** 33. If any Deputy Sheriff, Bailiff or Sheriff's officer has in his possession, custody, or control, any writ of summons, *fiery facias*, or other writ, or any bench warrant or process whatsoever, and, upon demand made by the Sheriff from whom the same was received, or his successor in office, or by any other party entitled to the possession of same, neglects or refuses to deliver up the same, such Sheriff, or his

successor in office, or the party entitled to the possession of the same, may proceed by summons and order before any Judge having jurisdiction in the Court out of which such writ or process issued, to compel the production thereof: which order may be enforced in the same manner as like orders for the return of writs against Sheriffs, and with or without costs, or be discharged with costs against the party applying, in the discretion of the Judge aforesaid. 32 V. c. 25, s. 4.

**34.** Every Sheriff shall, each day, holidays excepted, keep his office open from ten o'clock in the forenoon until four in the afternoon, and during all that time he, his Deputy or some clerk competent to do business for him, shall be present to transact the business of the office. 27-8 V. c. 28, s. 33; 39 V. c. 7, s. 13.

Holidays in  
Sheriff's office.

**35.** Every Sheriff shall keep in his office the following books, namely:

Certain books  
to be kept in  
Sheriff's office.

1. Process Books—in which shall be entered a memorandum of every process other than writs of execution, or writs in the nature of writs of execution, received by the Sheriff, the Court out of which the same issued, the date of the receipt, the nature of the process, the names of the parties thereto, the attorney by whom issued, the date of the return, and the nature of the return made thereto, or what was thereunder or therewith done respectively;

Process  
Books.

2. Execution Books—for goods and lands respectively, in which shall be entered a memorandum of every writ of execution, or writ in the nature of a writ of execution, the Court out of which the same issued, the names of the parties thereto, the attorney by whom issued, the date of return, and the nature of the return made thereto, or what was done thereunder or therewith; and

Execution  
Books.

3. A Cash Book—in which shall be entered all cash received or paid away by the Sheriff in his official capacity, or in connection with his office, for any service whatever, for fees, poundage, service of process and papers, attendance at Courts, moneys levied under execution, or under writs in the nature of writs of execution or otherwise, the date of the receipt or payment, the cause, matter or service in which, or on account of which, the same was received or paid away. 32 V. c. 25, s. 6.

Cash Book.

**36.** It shall be the duty of every Sheriff to supply himself with the books in the next preceding section mentioned, and the cost thereof shall be paid by the County of which he is Sheriff. 32 V. c. 25, s. 7.

To be paid for  
by county.

**37.** Every Sheriff shall quarterly, and within twenty days after the expiration of each quarterly period, transmit to the Treasurer of the Province a just, true, and faithful account, to be verified upon oath, of all fines, penalties, and forfeitures

Sheriff to  
make quarter-  
ly returns of  
fines, &c., to  
Treasurer.

and pay over  
moneys.

Penalty for  
neglect.

Rev. Stat.  
c. 76.

which he has been required and commanded to levy and make by any lawful authority, and of the receipt and application of the same, or the reason why the same have not been received and applied; and each Sheriff shall pay over to the proper officer or person lawfully entitled to receive the same, the several sums collected by him, as aforesaid, within twenty days next after the period within which the same have been collected as aforesaid; and every Sheriff neglecting or refusing to transmit such quarterly account, or to pay over any such sum or sums of money so collected by him, within the period hereby prescribed, shall incur and be subject to the like penalty, and may be sued for the same in the same manner as is provided and declared with regard to Justices of the Peace neglecting or refusing to make the returns required by *The Act respecting Returns of Convictions and Fines by Justices of the Peace*. 27-8 V. c. 28, s. 48; C. S. U. C. c. 124, s. 7.

Duty of Sheriff as regards writs of Nisi Prius and attendance at Assizes, &c.

**38.** Every Sheriff shall execute and return before the Judge or Judges assigned to hold the Assizes or to execute any commission or to hold any Court of Assize and Nisi Prius, or of Oyer and Terminer and Gaol Delivery in his County, all precepts and writs of Nisi Prius and other jury process delivered to him or his Deputy, and shall give his attendance upon such Judge or Judges, as well for the returning of such "*tales de circumstantibus*" as may be prayed for the trial of issues, as for the maintenance of good order in Her Majesty's Courts, and for the doing and executing of all other things to the office of Sheriff in such case belonging. 27-8 V. c. 28, s. 46.

Sheriffs before suit for fees may serve notice of application to the Court for payment.

**39.** Before an action is commenced by a Sheriff for the recovery of a bill of fees chargeable against an attorney or solicitor, and after the expiration of one month from the service of the bill, the Sheriff may serve the attorney or solicitor with a notice of an application to the Court of Chancery, returnable not earlier than eight days from the day of service, or for a rule or summons of either of the Courts of Queen's Bench or Common Pleas, or of any Judge of a County Court, returnable not earlier than eight days from the day of service, for payment of the amount of the bill; and the amounts claimed shall be stated in the notice, rule or summons. 37 V. c. 7, s. 85.

Power of the Court or Judge and proceedings on return of the notice.

**40.** On the return of the notice, rule or summons, the Court or Judge may, without a reference, direct the payment to the Sheriff of the amount of his demand, or of any less amount, either without costs, or with costs to be fixed by an order or to be taxed; or the Court or a Judge may order the bill and the demand thereon to be taxed by the proper officer of any of the said Courts, and may direct that the officer shall tax to the party entitled thereto his costs of the reference, and may also direct that the Sheriff and the attorney or solicitor shall respectively pay what may be found due to the other upon the conclusion of

the reference and taxation ; and the Court or Judge making the reference shall restrain the bringing of any suit pending the reference ; and in case the order of reference does not make provision in this behalf, the officer named in the order of reference may, in his discretion, having regard to the matters in dispute between the parties and occasioning the costs, tax the costs of the order and reference, or any portion thereof, in favour of either party, or may disallow any part thereof. 37 V. c. 7, s. 86.

**41.** The party entitled to payment may, at the expiration of eight days from the date of the order or of the certificate of the taxing officer, as the case may be, sue out a writ or writs of execution for the amount ordered or certified to be payable to him. 37 V. c. 7, s. 87.

Execution for amount payable to the Sheriff.

**42.** Upon the separation of any Junior County from any Senior County, or upon the dissolution of any Union of Counties, the powers, functions and jurisdiction of the Sheriff of the Senior County over and within the Junior County shall remain unimpaired in respect of any writ of mesne or final process in any civil suit or cause in his hands for service or execution at the time of such separation or dissolution, and in respect of any renewal of any such writ, and of any subsequent or supplementary writ of the same nature in the same suit or cause. 27-8 V. c. 28, s. 44.

Provision in case of a dissolution of a Union of Counties.

**43.** In case a Sheriff dies, resigns his office, and his resignation is accepted, or is removed therefrom, the Deputy Sheriff by him appointed shall nevertheless continue the office of Sheriff, and execute the same and all things belonging thereto in the name of the Sheriff so dying, resigning or being removed, until another Sheriff has been appointed and sworn into office ; and the said Deputy Sheriff shall be answerable for the execution of the said office in all respects and to all intents and purposes whatsoever, during such interval as the Sheriff so dying, resigning or having been removed, would by law have been, if he had been living or continuing in office, and the security given to the Sheriff so deceased, resigning or being removed, by his said Deputy Sheriff, and his pledges, as well as the security given by the said Sheriff under this Act, shall remain and be a security to the Queen, Her Heirs and Successors, and to all persons whatsoever, for the due and faithful performance of the duties of his office during such interval by the said Deputy Sheriff. 27-8 V. c. 28, s. 47.

Deputy Sheriff to continue office of Sheriff in cases of death or resignation.

Obligation of sureties in such cases.

**44.** All books, accounts, records, papers, writs, warrants, process, moneys and other matters and things in the possession or under the control of any Sheriff by virtue of, or appertaining to, his office as Sheriff, shall be the property of the Government of this Province, and the same and every of them

All books, etc. to be the property of the Government.



shall, immediately upon the resignation, removal from office, or death of any such Sheriff, be, by the party in whose possession or control they may come or happen to be, handed over to and taken possession of by the successor in office of such Sheriff, or such person as the Lieutenant-Governor may appoint to receive the same. 32 V. c. 25, s. 1.

No one but the succeeding Sheriff to hold them on pain of fine and imprisonment.

Penalty.

**45.** No person, except the successor in office of the Sheriff so resigning, being removed, or dying, or the person so to be appointed by the Lieutenant-Governor as aforesaid, shall take, have or hold any such books, accounts, records, papers, writs, warrants, process, moneys, or other matters or things; and any person having or holding any of the matters aforesaid shall forthwith, on demand, deliver over the same and every of them to the said succeeding Sheriff, or to the person so to be appointed as aforesaid; and, upon any such person neglecting or refusing so to do, on conviction thereof before the Judge of the County Court of the County in which the offence occurs, he shall be liable to pay a penalty to and for the use of Her Majesty of not less than ten dollars, nor more than fifty dollars, besides costs, for every day he so neglects or refuses: and in default of the payment of the said penalty and costs, he shall be imprisoned in the County Gaol of the County in which the conviction takes place, for a period not exceeding three calendar months, or until the said penalty and all costs have been fully paid. 32 V. c. 25, s. 2.

Proceedings on removal &c., of Sheriff.

Duty of outgoing Sheriff.

**46.** Upon the removal of any Sheriff from his office or upon his resignation of the same, and upon the appointment of his successor, the outgoing Sheriff, or, in the event of the death of any Sheriff, the Deputy Sheriff shall forthwith make out and deliver to the new and incoming Sheriff a true and correct list and account, under his hand, of all prisoners in his custody, and of all writs and process in his hands not wholly executed by him, with all such particulars as shall be necessary to explain to the said incoming Sheriff the several matters intended to be transferred to him, and shall thereupon hand over and transfer to the care and custody of the said incoming Sheriff, all such prisoners, writs and process and all records, books, and matters appertaining to the said office of Sheriff.

And of incoming Sheriff.

**2.** The incoming Sheriff shall thereupon sign and deliver a duplicate of such list and account to the Sheriff going out of office, or to the Deputy Sheriff where the previous Sheriff has deceased, to whom the same shall be a good and sufficient discharge of and from all the prisoners therein mentioned and transferred to the incoming Sheriff, and from the further charge of the execution of the writs, process and other matter therein contained, without any writ of discharge or other writ whatsoever, and the said incoming Sheriff shall thereupon stand and be charged with the said prisoners, and also with the execution and care of the said writs, process and other matters contained

in the said list and account, as fully and effectually as if the same writs and process had been handed over by indenture and schedule.

3. In case any such outgoing Sheriff, or, in the case of the death of the former Sheriff, any such Deputy Sheriff, refuses or neglects to make out, sign and deliver such list and account as aforesaid, and to hand over the process aforesaid in manner aforesaid, every such Sheriff or Deputy Sheriff so neglecting and refusing shall be liable to make such satisfaction by damages and costs to the person aggrieved, as such person sustains by such neglect or refusal. 27-8 V. c. 28, s. 49. Penalty for neglect.

47. Any Sheriff, after resigning office, or removal from office, or his heirs, executors or administrators, shall or may, at any and at all time or times thereafter, have the right and be at liberty to have access to, search and examine into any or all accounts, books, papers, writs, warrants and process of whatever kind, and all other matters and things which were formerly in the possession of him the said Sheriff before his resignation or removal, and which, at the time of making or requiring to make such search or examination, are in the possession or control of the succeeding Sheriff, or the then Sheriff of the County, free of all costs, charges and expenses. 32 V. c. 25, s. 5. Sheriffs resigning may examine and inspect.

48. In case of the death, resignation or removal of any Sheriff, or of any Deputy Sheriff while there is no Sheriff, after he has made a sale of lands, but before he has made the deed of conveyance of the same to the purchaser, and whether such sale was under an execution or for arrears of taxes, the deed or conveyance shall be made to the purchaser by the Sheriff, or by the Deputy Sheriff who is in office acting as Sheriff as aforesaid, at the time when the deed or conveyance is made. 27-8 V. c. 28, s. 43. Conveyances in case of death, &c., of Sheriff, who has sold lands.

## SCHEDULE A.

### (Section 2.)

#### OATH OF OFFICE.

County (or, United Counties) }  
of

To wit : }

I, A. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, Esquire, having been appointed Sheriff of the County (or United Counties) of \_\_\_\_\_, do swear that I will well, truly and faithfully perform and execute all the duties required of me under the laws of this Province pertaining to the said office of Sheriff, so long as I continue therein, and that I have not

given directly or indirectly, or authorized any person to give, any money, gratuity or reward whatsoever for procuring the said office for me.

A. B.

Sworn before me at \_\_\_\_\_, in the County }  
of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_ }  
C. D.,

Judge of the County Court, *(or J. P. as the case may be)* for the County  
*(or United Counties)* of \_\_\_\_\_

27-8 V. c. 28. Form B.

## SCHEDULE B.

(Section 4.)

### FORM OF COVENANT.

Know all men by these presents, That we, A. B., Sheriff of the County  
*(or United Counties)* of \_\_\_\_\_, Esquire, C. D., of \_\_\_\_\_, in the  
County of \_\_\_\_\_, Esquire, and E. F., of \_\_\_\_\_, in the County of \_\_\_\_\_,  
Esquire *(when four sureties are given, the names of the other two to be inserted  
here in like manner)*, do hereby jointly and severally, for ourselves and for  
each of our heirs, executors and administrators, covenant and promise  
that the said A. B., as Sheriff of the County *(or United Counties)* of \_\_\_\_\_  
\_\_\_\_\_, shall well and duly pay over to the person or persons entitled to  
the same, all such moneys as he shall receive by virtue of his said office of  
Sheriff, and that neither he nor his Deputy shall wilfully misconduct him-  
self in his said office to the damage of any person, being a party in any  
legal proceedings. Nevertheless, it is hereby declared that no greater sum  
shall be recovered under this covenant against the several parties hereto  
than as follows, that is to say: Against the said A. B., in the whole  
\$ \_\_\_\_\_ *(the amount fixed by Order in Council)*; against the said C. D.,  
in the whole, \$ \_\_\_\_\_ *(the amount fixed by Order in Council)*; against  
the said E. F., in the whole, \$ \_\_\_\_\_ *(the amount fixed by Order in  
Council. (If more than two sureties, add the names and amounts here in like  
manner.)*

In witness whereof, we have to these presents set our hands and seals  
this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight  
hundred and \_\_\_\_\_

Signed, sealed and delivered }  
in the presence of }  
L. M. }  
N. O. }

A. B. [L.S.]  
C. D. [L.S.]  
E. F. [L.S.]  
&c., &c.

27-8 V. c. 28. Form D.

## SCHEDULE C.

(Section 4.)

### AFFIDAVIT OF JUSTIFICATION.

County *(or United Counties)* }  
of \_\_\_\_\_ }  
To wit :

I, A. B. *(follow the description given in the covenant)*, the principal  
covenantor in the annexed covenant named *(or one of the sureties in the  
annexed covenant named)*, do make oath and say as follows :

1. That I am seised and possessed to my own use of real estate in Ontario of the actual value of *(the amount for which the party making the affidavit is liable by the covenant)* over and above all charges upon or incumbrances affecting the same.

2. The said real estate consists of *(describe the property.)*

3. I am worth *(the amount for which the party has become liable by the covenant,)* dollars over and above my just debts.

4. My post office address is as follows : *(insert name of the post office.)*

A. B.

Sworn before me at \_\_\_\_\_, in the County \_\_\_\_\_  
of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

P. T.,  
Judge of the County Court, or J. P. for the County (or United Counties)  
of *(as the case may be).*

27-8 V. c. 28, Form E ; 40 V. c. 7, Sched. A (13).

## CHAPTER 17.

### An Act respecting Inquiries concerning Public Matters.

Commissioners may be empowered to receive evidence on oath, s. 1.  
And to compel attendance of witnesses, s. 2.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Whenever the Lieutenant-Governor in Council deems it expedient to cause inquiry to be made into and concerning any matter connected with the good government of this Province, or the conduct of any part of the public business thereof, or the administration of justice therein, and such inquiry is not regulated by any special law, the Lieutenant-Governor may, by the commission in the case, confer upon the Commissioners or persons by whom such inquiry is to be conducted, the power of summoning before them any party or witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation if they be parties entitled to affirm in civil matters), and to produce such documents and things as such Commissioners deem requisite to the full investigation of the matters into which they are appointed to examine. 31 V. c. 6, s. 1.

2. The Commissioner or Commissioners shall then have the same power to enforce the attendance of such witnesses, and to



Proviso.

compel them to give evidence, as is vested in any Court of Law in civil cases; but no such party or witness shall be compelled to answer any question, by his answer to which he might render himself liable to a criminal prosecution. 31 V. c. 6, s. 2; 32 V. c. 27, s. 3.

## CHAPTER 18.

### An Act respecting the Publication of Official Notices.

Publication of advertisements by public officers to be in *Ontario Gazette* unless otherwise provided, s. 1.  
Legal Advertisements, ss. 2, 3.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Advertisements required by any Act or Law shall be inserted in the *Ontario Gazette* only, unless another mode is directed.

1. All advertisements, notices or publications, which, by any Act or Law in force in this Province, are required to be given by the Provincial Government or any Department thereof, or by any Sheriff or other officer, or by any municipal authority, or by any officer, person or party whomsoever, shall be given in the *Ontario Gazette*, unless some other mode of giving the same be directed by law; and if in any Act in force in Ontario, of the late Province of Upper Canada, or of the late Province of Canada, and being within the legislative authority of the Legislature of this Province, any such notice is directed to be given in the *Upper Canada Gazette* by authority, or in the *Canada Gazette*, the *Ontario Gazette* shall be understood to be intended. 31 V. c. 6, s. 3.

Publication of legal advertisements.

2. Where Sheriff's' advertisements, and other legal and official advertisements (except lists of convictions by Justices of the Peace or other advertisements, the whole expense of which is payable by Counties), are required to be published in any newspaper other than the *Ontario Gazette*, they shall be published in such newspapers as the Lieutenant-Governor in Council from time to time directs. 37 V. c. 7, s. 88; 39 V. c. 8, s. 3.

Tenders to be made for publication of advertisements paid for by Counties.

3. Tenders for the publication of the lists of convictions by Justices of the Peace and other legal and official advertisements the whole expense of which is payable by Counties, shall be publicly advertised for by the Council of the County, subject to such conditions, if any, as to circulation and other matters, as the Council may think just, and the contract shall be given to the newspaper making the lowest tender, on or subject to the said conditions, if any there be. 39 V. c. 8, s. 3.

## TITLE V.

### PUBLIC DEPARTMENTS, REVENUE AND PROPERTY.

---

#### 1. *Revenue and Finance.*

- CHAP. 19.—Consolidated Revenue Fund, p. 228.  
 “ 20.—Revenue, Collection, &c., of, p. 229.  
 “ 21.—Law Stamps, p. 239.  
 “ 22.—Land Tax, Algoma, p. 244.

#### 2. *Public Lands.*

- CHAP. 23.—Public Lands, sale and management of, p. 249.  
 “ 24.—Free Grants and Homesteads to Settlers, p. 261.  
 “ 25.—Heir and Devisee Commission, p. 267.  
 “ 26.—Public Lands, sale and management of Timber on, p. 275.  
 “ 27.—Trespasses to Public Lands, p. 281.  
 “ 28.—Clergy Reserves, p. 287.  
 “ 29.—General Mining Act, p. 290.

#### 3. *Public Works.*

- CHAP. 30.—Public Works Department, p. 300.  
 “ 31.—Riots near Public Works, p. 316.  
 “ 32.—Sale of Intoxicating Liquors near Public Works, p. 321.

#### 4. *Drainage Works.*

- CHAP. 33.—Expenditure of Public Money for Drainage, p. 326.  
 “ 34.—Municipal Drainage Aid Act, p. 339.

#### 5. *Agriculture and Arts.*

- CHAP. 35.—Agriculture and Arts Act, p. 343.

#### 6. *Statistics.*

- CHAP. 36.—Registration of Births, &c, p. 376.
-

## 1. *Revenue and Finance.*

CHAP. 19.—Consolidated Revenue Fund, p. 228.

“ 20.—Collection of the Revenue, p. 229.

“ 21.—Law Stamps, p. 238.

“ 22.—Land Tax in Algoma, p. 244.

## CHAPTER 19.

### An Act respecting the Consolidated Revenue Fund of Ontario.

Consolidated Revenue Fund, of what composed, s. 1.

Permanent charges on, s. 2.

Investment of surplus, s. 3.

Endorsement of debentures payable to order of Treasurer may be by his successor, s. 4.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Revenues from certain funds and from fees on legal proceedings under Rev. Stat. c. 21, and all other revenues, to form the Consolidated Revenue Fund of Ontario.

1. The Upper Canada Grammar School Income Fund, and all moneys arising from investments made on account thereof, the income and revenue derived from the Upper Canada Grammar School Fund, the Upper Canada Grammar School Lands, the Upper Canada Building Fund, the Common School Fund and the Common School Lands, and all the fees and charges payable under and by virtue of chapter twenty-one of the Revised Statutes of Ontario, or the Acts therein mentioned, and all other duties, revenues and moneys whatsoever, of the Province of Ontario, over which the Legislature of this Province has, or hereafter may have, the power of appropriation, shall form one Consolidated Revenue Fund, to be called “The Consolidated Revenue Fund of Ontario,” to be appropriated for the public service of this Province, in the manner and subject to the charges hereinafter mentioned. 31 V. c. 3, s. 1; 33 V. c. 9, ss. 1 & 5.

Permanent charges thereon

2. The said Consolidated Revenue Fund shall be permanently charged with all the costs, charges and expenses incident to the collection, management and receipt thereof; such costs, charges and expenses being subject nevertheless to be reviewed and

audited in the manner directed by any Act of the Legislature.  
31 V. c. 3, s. 2.

3. The Lieutenant-Governor in Council may from time to time, in his discretion, invest any surplus of the said Consolidated Revenue Fund not required for the public service, in the debentures or other public securities of the Dominion of Canada; and whenever the exigencies of the public service render it necessary or expedient to convert the same into money, shall sell and dispose of the same, first giving one month's notice of such intended sale in the *Official Gazette* of the Province of Ontario and of the Dominion of Canada, calling for tenders for the purchase of the stock or debentures in which such surplus is invested. 31 V. c. 3, s. 4.

Investment of  
surplus.

4. In case a debenture which is the property of the Province is, in the body thereof, or by endorsement, made payable to the order of the Treasurer of Ontario, either in his own name, or in his name of office, and such debenture has not been endorsed by such Treasurer while holding office, then any of his successors in office may lawfully endorse every such debenture, and such endorsement shall have the like effect as if it had been made by the Treasurer to whose order such instrument was made payable. 40 V. c. 8, s. 68.

Endorsement  
of debentures  
payable to or-  
der belonging  
to the Pro-  
vince.

## CHAPTER 20.

An Act respecting the Collection and Management of  
the Revenue, and the liability of Public Account-  
ants.

### Interpretation—

Revenue, s. 1.

Revenue officer, s. 2.

### Collection of the Revenue—

Officers, s. 3.

Salaries to be in lieu of fees, s. 4.

Exemption of officers from certain  
duties, s. 5.

Oath of office, s. 6.

Regulations, s. 7.

Employment of officers, ss. 8, 9.

Office hours, ss. 10, 11.

Accounts, s. 12.

Mode of payment of public money,  
ss. 13, 14.

### Liability of Revenue Officers—

Neglect to transmit accounts, s.  
15.

Neglect to pay over moneys, ss.  
16-19.

Loss of public money by malfeas-  
ance or gross neglect, s. 20.

Unapplied public money to be re-  
turned to Treasurer, s. 21.

### Penalties, &c.—

Taking of fees, s. 22.

Embezzlement of money or chat-  
tels, the property of the Crown,  
C. S. C. c. 16, s. 40.

Other remedies of the Crown un-  
impaired, s. 24.

Remission of duties, tolls, s. 25-27.

Miscellaneous, ss. 28, 29.



**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

**Interpretation** **1.** In this Act the words "Provincial Revenue" or "Revenue" shall mean and include all Provincial Revenue and branches thereof, and to all public moneys, whether arising from the Crown Lands or Timber, or from tolls for the use of any public works, or from penalties or forfeitures, or from any rents or dues, or any other source whatsoever, in so far as the collection, management and accounting for the same are respectively subject to the control of the Provincial Legislature. C. S. C. c. 16, s. 1.

**Revenue Offi-** **2.** Any officer, functionary or person whose duty it is to receive any moneys forming part of the Revenue, or who is entrusted with the custody or expenditure of any such moneys, although he may not be regularly employed in collecting, managing or accounting for the same, shall be subject to the provisions of this Act, so far as regards the accounting for and paying over such moneys, whatever be the office or employment by virtue of which he may receive or be entrusted with the same. C. S. C. c. 16, s. 1 (2).

COLLECTION AND MANAGEMENT OF THE REVENUE.

**Lieut.-Governor in Council shall determine what officers are necessary, and fix their salaries** **3.** The Lieutenant-Governor in Council may from time to time determine what officers or persons it is necessary to employ in collecting, managing or accounting for the Provincial Revenue, and in carrying into effect the laws thereunto relating, or for preventing any contravention of such laws, and may assign their names of office, and grant to such officers or persons as aforesaid such salaries or pay for their labour and responsibility in the execution of the duties of their respective offices and employments as to the said Lieutenant-Governor in Council seems reasonable and necessary, and may appoint the times and manner in which the same shall be paid. C. S. C. c. 16, s. 2.

**Salaries to be in lieu of all other emoluments, and officers to give their whole time to the duties of their offices.** **4.** The salary or pay allowed to any such officer or person as aforesaid shall be in lieu of all fees, allowances or emoluments of any kind whatsoever, except actual and authorized disbursements, shares of seizures, forfeitures and penalties; And no such officer or person, receiving a salary at or exceeding the rate of one thousand dollars per annum, shall exercise any other calling, profession, trade or employment whatsoever with a view to derive profit therefrom, directly or indirectly, or shall hold any other office of profit whatsoever, except it be an office relating to the management and collection of the Revenue and the accounting for the same, and held by such officer or person

**Exception.**

with the permission of the Lieutenant-Governor in Council. C. S. C. c. 16, s. 3.

5. No officer or person regularly employed in the collection or management of the Revenue, or in accounting for the same, shall, while he remains such officer or so employed, be compelled to serve in any other public office or in any municipal or local office, or on any jury or inquest. C. S. C. c. 16, s. 4.

Revenue Officers exempted from certain duties.

6. Every person appointed to any office or employment relative to the collection or management of the Revenue, or in accounting for the same, shall, at his admission to such office or employment, take the following oath before such officer as the Lieutenant-Governor may appoint to receive the same, that is to say :—

Officers to take an oath of office.

“I, A.B., do swear to be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge by my appointment as \_\_\_\_\_, and that I will not require, take or receive any fee, perquisite, gratuity or reward, whether pecuniary or of any other sort or description whatever, either directly or indirectly, for any service, act, duty, matter or thing done or performed or to be done or performed in the execution or discharge of any of the duties of my said office or employment, on any account whatever, other than my salary, or what shall be allowed me by law, or by order of the Lieutenant-Governor of this Province in Council : So help me God.”

The oath.

C. S. C. c. 16, s. 5.

7. The Lieutenant-Governor in Council may, from time to time, make all such new divisions of the Province into districts or otherwise as are required with regard to the collection or management of the Revenue, and may assign the officers or persons by whom any duty or service relative to any such purpose shall be performed within or for any such district or division, and the place or places within the same where such duty or service shall be performed,—and may make all such regulations concerning such officers and persons, and the conduct and management of the business to them entrusted, as are consistent with the law, and as he deems expedient for carrying it into effect, in the manner best adapted to promote the public good.

Lieutenant-Governor in Council may divide Province into Revenue Divisions.

2. Any general regulation or order made by the Lieutenant-Governor in Council for any purpose whatever for which an order or regulation may be so made under the provisions of this Act, shall apply to each particular case within the intent and meaning of such general regulation or order, as fully and effectually as if the same had been made with reference to such particular case, and the officers, functionaries or parties concerned had been specially named therein.

General regulations, how to apply.

3. A printed copy of any regulation or order of the Lieutenant-Governor in Council printed by the Queen's Printer, or a written copy thereof attested by the signature of the Clerk of the Executive Council, shall be evidence of such regulation or

As to proof of regulations, orders, &c.

order; and any order in writing signed by the Provincial Secretary, and purporting to be written by command of the Lieutenant-Governor, shall be received in evidence as the order of the Lieutenant-Governor. C. S. C. c. 16, s. 6.

Persons employed with the concurrence of the Lieut.-Governor in Council, to be deemed the proper officers.

8. Every person employed on any duty or service relating to the collection or management of the Revenue, by the orders or with the concurrence of the Lieutenant-Governor in Council (whether previously or subsequently expressed), shall be deemed to be the proper officer for that duty or service; and every act, matter or thing required by any law in force to be done or performed by, to or with any particular officer nominated for that purpose in such law, being done or performed by, to or with any person appointed or authorized by the Lieutenant-Governor in Council to act for or in behalf of such particular officer, shall be deemed to be done or performed by, to or with such particular officer;

Same as to places.

2. And every act, matter or thing required by any law at any time in force, to be done or performed at any particular place within any such district or division of this Province as aforesaid, being done or performed at any place within such district or division, appointed by the Lieutenant-Governor in Council for such purpose, shall be deemed to be done or performed at the particular place so required by law. C. S. C. c. 16, s. 7.

Officers employed in one branch may be employed in another.

9. Any officer or person employed in the collection, management or accounting for any branch of the Revenue, may be employed in the collection, management or accounting for any other branch thereof, whenever it is deemed advantageous for the public service so to employ him. C. S. C. c. 16, s. 8.

Hours of office and seasons for certain business, how appointed.

10. The Lieutenant-Governor in Council may, from time to time, appoint the hours of general attendance of the officers and persons employed in the collection and management of the Revenue, at their proper offices and places of employment; and may also appoint the times during such hours, or the seasons of the year, at which any particular parts of the duties of such officers or other persons shall be performed by them respectively; and a notice of the hours of general attendance so appointed shall be kept constantly posted up in some conspicuous place in such offices or places of employment. C. S. C. c. 16, s. 9.

To be kept posted up in some conspicuous place.

Offices may be closed on holidays.

11. No officer employed in the collection of the Provincial Revenue shall be required to keep his office open on any holiday. 39 V. c. 7, s. 13.

Lieutenant-Governor in Council may direct accounts to be

12. The Lieutenant-Governor in Council may direct any officer or person employed in collecting, managing or accounting for any branch of the Provincial Revenue, to keep any books or accounts which he deems it advisable to direct to be kept

for the purpose of obtaining any statistical information concerning matters of public interest, and may authorize and allow any necessary expense incurred for such purpose. C. S. C. c. 16, s. 11.

kept for statistical purposes.

**13.** All public moneys, from whatever source of Revenue derived, and all moneys forming part of special funds administered by the Provincial Government, shall be paid to the credit of the Treasurer of the Province, through such banks or persons as the Lieutenant-Governor in Council may from time to time direct and appoint; And certificates of such deposit, in duplicate, shall be taken by the persons making the same, and transmitted, one to the Treasurer, and the other to the Department to which the payment relates. C. S. C. c. 16, s. 12.

Public money to be paid to credit of the Treasurer through banks, &c. Certificates to be taken.

**14.** The Lieutenant-Governor in Council may, from time to time, appoint the times and mode in which any officer or person employed in the collection, management or accounting for any part of the Revenue, shall account for and pay over the public moneys which come into his hands, to the officer appointed to receive the same, and may determine the times, manner and form in which, and the officer by whom any licenses on which any duty is payable, are to be issued.

Lieutenant-Governor in Council to appoint the mode and times in which moneys shall be accounted for and paid over.

2. Such accounts and payments shall be rendered and made by such officers respectively at least once in every three months. C. S. C. c. 16, s. 13.

#### LIABILITY OF PUBLIC ACCOUNTANTS AND REVENUE OFFICERS CIVILLY.

**15.** If any corporation, officer or person refuses or neglects to transmit any account, statement or return, with the proper vouchers, to the officer or department to whom he is hereby required to transmit the same, on or before the day hereby appointed for the transmission thereof, such corporation, officer or person shall for such refusal or neglect forfeit and pay to the Crown, for the public uses of this Province, the sum of one hundred dollars, to be recovered with costs, as a debt due to the Crown, and in any Court and in any way in which debts to the Crown can be recovered; and in any action for the recovery of such sum, it shall be sufficient to prove, by any one witness or other evidence, that such account, statement or return ought to have been transmitted by the defendant, as alleged on the part of the Crown, and the onus of proving that the same was so transmitted shall rest upon the defendant. C.S.C. c.16, s. 31.

Penalty on parties not transmitting accounts as hereby required.

Proof in action for recovery of penalty.

**16.** Wherever the Provincial Treasurer has reason to believe that any officer or person has received money for the Crown, or for which he is accountable to the Crown, or has in his hands any public money applicable to any purpose, and has not paid over or duly applied and accounted for the same, he

Notification of persons neglecting to pay over money received for public purposes.



may direct a notice to such officer or person, or to his representative in case of his death, requiring him within a time to be therein named, and not less than thirty nor more than sixty days from the service of such notice, to pay over, apply and account for such money to the Treasurer, or to the officer to be mentioned in the notice, and to transmit to him the proper vouchers that he has so done;

Notice to be served by the Sheriff.

2. Such notice shall be served by the Sheriff of the District or County where the service is made, or his Deputy, by delivering a copy to the officer or person to whom it is addressed, or leaving it for him at his usual place of abode; and the return of the Sheriff, with an affidavit of such service, shall be conclusive evidence thereof. C. S. C. c. 16, s. 32.

Proceedings against persons refusing to comply with such notice.

17. If any officer or person fails to pay over, apply or account for any such money, and to transmit such vouchers as aforesaid within the time limited by the notice served on him, the Provincial Treasurer shall state an account as between such officer or person and the Crown in the matter to which the notice relates, charging interest from the service thereof, and shall deliver a copy thereof to the Attorney-General, and such copy shall be sufficient evidence to support any information or other proceeding for the recovery of the amount therein shown to be in the hands of the defendant as a debt due to the Crown, saving to the defendant the right to plead and give in evidence all such matters as may be legal and proper for his defence; and the defendant shall be liable to the costs of such information or proceeding, whatever be the judgment therein, unless he proves that, before the time limited in such notice, he paid over or applied and duly accounted for the money therein mentioned, and transmitted the proper vouchers with such account, or unless he issued the same in a representative character, and is not personally liable for such money, or to render such account. C. S. C. c. 16, s. 33.

Liability of defendants as to costs.

Proceedings against persons transmitting accounts without vouchers.

18. Wherever any such officer or person as aforesaid has transmitted an account either before or after notice as aforesaid, but without vouchers or with insufficient vouchers for any sum for which he therein takes credit, the Provincial Treasurer may notify such officer or person, in the manner mentioned in section sixteen of this Act, to transmit vouchers, or sufficient vouchers, within thirty days after the service of the notice; And if such vouchers are not transmitted within that time, the Treasurer may state an account against such officer or person disregarding the sums for which he has taken credit, but for which he has transmitted no vouchers or insufficient vouchers, and may deliver a copy of such account to the Attorney-General, and such copy shall be sufficient evidence to support an information or other proceeding for the recovery of the amount therein shown to be in the hands of the defendant, saving to the defendant the right to plead and give in evidence

all such matters as may be legal and proper for his defence ; but such defendant shall be liable to the costs of the information or proceeding, whatever be the judgment therein, unless the vouchers by him transmitted within the time limited by the notice served on him, or before such service, are found of themselves sufficient for his defence, and for his discharge from all sums demanded of him.

Defendant to be liable to costs.

2. The said notice shall be served and the Sheriff's return of service shall be of the like effect as provided in section sixteen with regard to the notice therein mentioned. C. S. C. c. 16, s. 34.

Notice to be served, and Sheriff's return, etc.

19. If at any time it appears clearly, by the books or accounts kept by or in the office, or by any officer or person employed in the collection or management of the Revenue or in accounting for the same, or by his written acknowledgment or confession, that such officer or person has by virtue of his office or employment received moneys belonging to Her Majesty, and amounting to a sum certain, which he has refused or neglected to pay over to the officer duly appointed to receive the same, and in the manner and at the time lawfully appointed, then upon affidavit of the facts, by any officer cognizant thereof, and thereunto authorized by the Lieutenant-Governor in Council, made before a Justice or Judge of any Court having jurisdiction in civil matters to the amount of the sum so ascertained as aforesaid, such Justice or Judge shall cause to be issued against and for the seizure and sale of the goods, chattels and lands of the officer or person so in default as aforesaid, such writ or writs as might have issued out of such Court, if the bond given by him had been put in suit and judgment had been thereupon obtained in favour of Her Majesty, for a like sum, and any delay by law allowed between judgment and execution had expired ; And such writ or writs shall be executed by the Sheriff or other proper officer, and such sum as aforesaid shall be levied under them with costs, and all further proceedings shall be had, as if such judgment as aforesaid had been actually obtained. C. S. C. c. 16, s. 35.

Moneys belonging to Her Majesty, and clearly appearing not to be paid over.

Writs of execution may issue, etc.

20. If by reason of any malfeasance, or of any gross carelessness or neglect of duty by any officer or person employed in the collection or management of the Revenue, or in collecting or receiving any moneys belonging to the Crown, for the public uses of the Province, any sum of money is lost to the Crown, such officer or person shall be accountable for such sum as if he had collected and received the same, and it may be recovered from him on proof of such malfeasance, gross carelessness or neglect, in like manner as if he had so collected and received it. C. S. C. c. 16, s. 37.

Persons employed to collect public money to be responsible for losses from their malfeasance or gross neglect, etc.

21. If any officer or person has received public money for the purpose of applying it to any specific purpose, and has not

Unapplied public money

to be payable  
back to the  
Treasurer on  
demand of the  
Treasurer.

so applied it within the time or in the manner provided by law ; or if any person having held any public office and having ceased to hold the same, has in his hands any public money received by him as such officer for the purpose of being applied to any specific purpose to which he has not so applied it,—such officer or person shall be deemed to have received such money for the Crown for the public uses of the Province, and may be notified by the Provincial Treasurer to pay such sum back to the said Treasurer, and the same may be recovered from him as a debt to the Crown, in any manner in which debts to the Crown may be recovered, and an equal sum may in the meantime be applied to the purpose to which such sum ought to have been applied. C. S. C. c. 16, s. 36.

Recovery, if  
not so paid.

#### PENALTIES.

No officer to  
take any fee,  
etc., on pain  
of dismissal.

**22.** If any officer or any person acting in any office or employment connected with the collection and management of the Revenue or the accounting for the same, takes or receives, directly or indirectly, any fee, perquisite, gratuity or reward, whether pecuniary or of any other sort or description whatever, from any person (not being an officer or person legally authorized to pay or allow the same), on account of anything done by him in any way relating to his office or employment, except such as he receives by order or with the permission of the Lieutenant-Governor in Council,—every such officer or person so offending shall, on proof to the satisfaction of the Lieutenant-Governor, be dismissed from his office or employment ; And if any person (not being an officer duly authorized to pay or allow the same) gives, offers or promises any such fee, perquisite, gratuity, or reward, such person shall, for every such offence, incur a penalty of four hundred dollars, which penalty shall be recoverable in any Court having jurisdiction in civil cases to a like amount. C. S. C. c. 16, s. 39.

Penalty on  
persons offer-  
ing fees, etc.

All books, &c.,  
used in the  
collection and  
the manage-  
ment of the  
revenue to be  
the property  
of Her Ma-  
jesty.

**23.** All books, papers, accounts and documents of what kind soever, and by whom and at whose cost soever the paper and materials thereof have been procured or furnished, kept by or used or received or taken into the possession of any officer or person employed or having been employed in the collection or management of the Revenue, or in accounting for the same, by virtue of his employment as such, shall be deemed to be chattels belonging to Her Majesty ; and all moneys or valuable securities received or taken into his possession by virtue of his employment shall be deemed to be moneys and valuable securities belonging to Her Majesty. C. S. C. c. 16, s. 40 (1).

[Section 40 (2) of C. S. C. c. 16, is as follows :

Officer embez-  
zling money,  
&c., may be  
proceeded

**2.** If any such officer or person at any time fraudulently embezzles any such chattel, money or valuable security (and any refusal or failure to pay over or deliver up any such chattel, money or valuable security to any officer or person who, being duly authorized by the Governor in

Council, demands the same, shall be a fraudulent embezzlement thereof), against as having feloniously stolen the same, and may be indicted and proceeded against, and being convicted thereof shall be liable to be punished in the same manner as any servant who, having fraudulently embezzled any chattel, money or valuable security received or taken into his possession by virtue of his employment, for or on the account of his master, and being in law deemed to have feloniously stolen the same, may be indicted, proceeded against and punished. 8 V. c. 4, s. 16.]

against as having feloniously stolen the same.  
See 32-3 V. c. 21, ss. 71 & 72 (Dom.)

**24.** Nothing in this Act, nor any conviction for the contravention thereof, nor any conviction under the fortieth section of chapter sixteen of the Consolidated Statutes of Canada, shall prevent, weaken or impair any remedy which the Crown has for recovering or enforcing the payment or delivering of any money or property belonging to the Crown, for the public uses of the Province, and in the possession of any officer or person whomsoever, by virtue of any other Act or Law, nor any remedy which Her Majesty or any other party has against the offender or his sureties, or against any other party whomsoever; but nevertheless the conviction of any such offender shall not be received in evidence in any suit or action at law or in equity against him. C. S. C. c. 16, ss. 38 & 40 (3).

Nothing in this Act to impair any remedy given to the Crown, &c., by any other law.

#### REMITTING DUTIES, FORFEITURES, ETC.

**25.** And whereas it is expedient that the Executive Government should be empowered to relax the strictness of the laws relative to the collection of the Revenue, in cases where, without such relaxation, great public inconvenience or great hardship and injustice to individuals could not be avoided:—Therefore, the Lieutenant-Governor, whenever he deems it right and conducive to the public good, may remit any duty or toll payable to Her Majesty, imposed or authorized to be imposed by any Act of the Provincial Legislature, or any forfeiture or pecuniary penalty imposed or authorized to be imposed by any such Act, for any contravention of the laws relating to the collection of the Revenue or to the management of any public work producing toll or revenue, although any part of such forfeiture or penalty be given by law to the informer or prosecutor, or to any other person;—And such remission may be made by any general regulation or by any special order in any particular case, and may be total or partial, unconditional or conditional; and if conditional, and the condition be not performed, the order made in the case shall be null and void, and all proceedings may be had and taken as if it had not been made.

Lieutenant-Governor may remit duties, tolls, or forfeitures.

Remission may be made by general regulation or special order.

**2.** A detailed statement of all such remissions as aforesaid shall be annually submitted to the Legislative Assembly within the first fifteen days of each ensuing Session thereof. C. S. C. c. 16, s. 43.

Detailed statement of remissions to be annually submitted to the Legislature.

**26.** If the Lieutenant-Governor directs that the whole or any part of any penalty imposed by any law relating to the

If penalty be remitted, the



remission to have the effect of a pardon.

Revenue be remitted or returned to the offender, such remission or return shall have the same effect as a pardon has in the case of a criminal offence, and the offence for which the penalty is incurred shall thereafter have no legal effect prejudicial to the party to whom such remission is granted. C. S. C. c. 16, s. 44 (1).

Attorney-General may sue for and recover any penalty, &c.

**27.** Her Majesty's Attorney-General for Ontario, or other law officer, may sue for and recover in Her Majesty's name any penalty or forfeiture imposed by any law relating to the Revenue before any Court or other judicial authority before which such, penalty or forfeiture is recoverable under such law, or may direct the discontinuance of any suit for any such penalty, by whom or in whose name soever the same has been brought—and in such case, the whole of such penalty or forfeiture shall belong to Her Majesty for the public uses of the Province, unless the Lieutenant-Governor in Council allows, as he may if he sees fit, any portion thereof to the seizing officer or other person by whose information or aid the penalty or forfeiture has been recovered. C. S. C. c. 16, s. 44 (2).

Application of forfeiture in such case.

#### MISCELLANEOUS PROVISIONS.

When an oath is necessary, it may be taken before officers appointed to receive same.

**28.** In all cases wherein proof on oath or by affirmation or declaration is required by any law relating to the collection or management of the Revenue or to the accounting for the same, or is necessary for the satisfaction or consideration of the Lieutenant-Governor in Council in any matter relating to the collection or management of the Revenue or to the accounting for the same, and no person or officer is specially named as the officer or person before whom the same is to be made, it may be made before such officer or person as may be appointed by the Lieutenant-Governor to receive the same, and such officer and person shall administer such oath or affirmation, or receive such declaration; And in any case or class of cases, where an oath is required by this Act or by any law in force, in any matter relating to the collection or management of the Revenue or the accounting for the same, the Lieutenant-Governor in Council, if he deems it fit, may authorize the substitution for such oath of a solemn affirmation or of a declaration, which shall then avail to all intents and purposes as such oath would have done. C. S. C. c. 16, s. 41.

Affirmation may be substituted for oath.

Testimony to be given on oath in inquiries touching revenue matters.

**29.** Upon all examinations and inquiries made by order of the Lieutenant-Governor in Council, for ascertaining the truth as to any fact relative to any matter concerning the collection or management of the Revenue, or the accounting for the same, or the conduct of officers or persons employed therein,—and upon like examinations and inquiries made by any person or officer authorized by the Lieutenant-Governor in Council to make such examinations and inquiries—any person to be examined as a witness shall deliver his testimony on oath, to be

administered to him by the officer or person making the examination or inquiry, who shall administer the same. C. S. C. c. 16, s. 42 (1).

## CHAPTER 21.

### An Act respecting Law Stamps.

Law stamps to be under the control of the Executive Government of this Province, s. 1.	Stamps to be obliterated when issued, s. 15.
Issue of stamps, ss. 2, 3.	Fees not multiples of ten cents increased, s. 16.
For what fees to be used, s. 4.	Sale of stamps, ss. 17-22.
Meaning of "fee" in this Act, s. 5.	Penalties—
Affixing of stamps, ss. 6-11.	For issuing writ, &c., without being duly stamped, s. 23.
Court to take notice of absence of stamp, s. 12.	For not obliterating stamps, s. 24.
Accidental omission to affix stamps may be rectified on terms, ss. 13, 14.	For forging or using stamps a second time, 27-8 V. c. 5, s. 32.
	Application of penalties, s. 25.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The Executive Government of this Province shall take charge of the fees and charges hereinafter mentioned or referred to, and under the provisions of this Act, shall have the absolute control and management thereof. 32 V. c. 42, ss. 2 & 3. Executive Government to take charge of fees payable in stamps, &c.

2. The Lieutenant-Governor may from time to time, by Order in Council, direct stamps to be prepared for the purposes of this Act, which stamps shall be of one kind but of different denominations, as convenience or the amount of the fees and charges hereinafter mentioned or referred to may from time to time require. 27-8 V. c. 5, s. 1; 32 V. c. 42, s. 1; 33 V. c. 9, s. 1. Issue of stamps.

3. The Lieutenant Governor may, by Order in Council, direct of what design and form, and of what colour or colours, the said stamps and the different denominations thereof shall be issued, and from time to time, as he finds or considers expedient, may alter or change the same. 33 V. c. 9, s. 4. Form, &c., of stamps.

For what purposes they shall be used in Ontario.

**4.** The said stamps shall be used in lieu and in payment of the fees and charges which form part of the Consolidated Revenue Fund, and are due and payable to the Crown upon legal proceeding under and by virtue of this Act or of any other Act or Acts whatsoever, either now or hereafter in force in Ontario, and under or by virtue of any Order in Council, Rule or Order of any Court, or proclamation heretofore made or issued, or hereafter made or issued under such Acts or any one or more of them. 27-8 V. c. 5, s. 2 ; 32 V. c. 42, s. 1 ; 33 V. c. 9, s. 1 ; 37 V. c. 7, ss. 90 & 92.

What shall be included by word "fees" or "fee."

**5.** All the said fees and charges shall, throughout this Act, be comprised in the word "fees" or "fee." 27-8 V. c. 5, s. 9.

No money to be received for such fees.

**6.** No money shall be paid to or received by any Court, or any officer of any Court, for any such fee due and payable to the Crown. 27-8 V. c. 5, s. 11.

No proceedings on which such fees are payable to be valid until all dues are paid by stamps.

**7.** No matter or proceeding whatever upon which any fee is due or payable to the Crown as aforesaid, shall be issued or shall be received or acted upon by any Court, or by any officer of any Court, until a stamp or stamps under this Act for the sum corresponding in amount with the amount of the fee so due or payable to the Crown as aforesaid, for, upon or in respect of such matter or proceeding, and in lieu of such sum so due and payable to the Crown, has or have been attached to or impressed upon the same. 27-8 V. c. 5, s. 12.

Proceedings not duly stamped to be void.

**8.** Every matter and proceeding whatever, upon which any such fee is due or payable to the Crown as aforesaid, and which is not so duly stamped, shall, if not afterwards stamped under the provisions of this Act, be absolutely void for all purposes whatsoever. 27-8 V. c. 5, s. 13

Cases of search etc., provided for.

**9.** In all cases of search, examining and authenticating of- fice copies of papers made by the attorney or solicitor, and in all other cases where it has not been customary to use in refer- ence to such search, examination, authentication, matter or thing, any written or printed document or paper whereon the stamp could be stamped or affixed, the party or his attorney or solicitor, requiring such matter or thing so to be done, shall make application for the same by a short note or memorandum in writing, and a stamp or stamps to the amount of the fee so payable shall be stamped on or affixed to such note or memo- randum. 27-8 V. c. 5, s. 14.

No unstamped process, etc., to be served.

**10.** No Sheriff or other officer or person shall serve or exe- cute any writ, rule, order or proceeding, or the copy of any writ, rule, order or proceeding upon which any such fee or charge is

due or payable, and which is not duly stamped under this Act, and every such service and execution contrary to this Act shall be void, and no recompense shall be allowed therefor. 27-8 V. c. 5, s. 15.

**11.** No matter or proceeding which has been duly stamped for the purpose for which it has been used, shall be considered as stamped for any other purpose, in case another fee or charge is due or payable thereon for any other or further use of the same matter or proceeding. 27-8 V. c. 5, s. 16.

Another stamp required whenever another charge is due.

**12.** The Court in which any such matter or proceeding is, or is pending, which ought to be, but is not so duly stamped, shall not, nor shall any Judge or officer of such Court take or allow any matter or proceeding to be had or taken upon or in respect of such matter or proceeding, although no exception is raised thereto by any of the parties, until such matter or proceeding has been first duly stamped. 27-8 V. c. 5, s. 17.

Court to take notice of want of stamp, though no objection is made.

**13.** Any party to any matter or proceeding in any Court which ought to be, but is not so duly stamped, may apply to the Court in which such matter or proceeding is pending, or to any Judge having jurisdiction in the case, for leave to have the same duly stamped, and in case this Act has not been knowingly and wilfully violated, the application shall on payment of costs be granted for the duly stamping of such matter or proceeding with stamps of such amount beyond the fee due thereon as may be thought reasonable, not exceeding ten times the amount of the stamp. 27-8 V. c. 5, s. 18.

Court may allow stamps to be affixed on certain terms.

**14.** The affixing of such stamp or stamps, under any order made for that purpose, shall have the same effect as if the said matter or proceeding had been duly stamped in the first instance. 27-8 V. c. 5, s. 19.

Retro-active effect of order.

**15.** In every case in which a stamp or stamps has or have, under this Act, been attached to or impressed upon any matter or proceeding, it shall be the duty of the officer who issues or receive such matter or proceeding, forthwith upon the issue or upon the receipt thereof, to cancel the same by writing or stamping or impressing in ink on such stamp the date of such issue or receipt, so as effectually to obliterate and cancel the stamp, and so as not to admit of its being used again. 27-8 V. c. 5, s. 20; 36 V. c. 15, s. 1.

Stamps used to be obliterated, so as not to be used again.

**16.** All fees now payable or hereafter at any time to become payable shall be at the following rates: all such fees up to ten cents shall be made and paid at ten cents; all from ten cents to twenty cents, at twenty cents; all from twenty cents to thirty cents, at thirty cents; and so in like manner all other fees which are not multiples of ten cents, shall be stated and

Fees or dues to the Crown increased in certain cases



Special provision as to charge in Court of Chancery for office copies.

payable at the multiple of ten cents next above the sum at which they are so stated; except that the charge in the Court of Chancery, for examining and authenticating office copies of papers, shall be, when the same do not exceed three folios, five cents; and for every three folios above the first three folios, an additional five cents; and for any number of folios less than three, above any number of folios divisible by three, the charge for such broken number shall be five cents. 27-8 V. c. 5, s. 21; 32 V. c. 42, s. 1.

Provincial Treasurer to procure stamps, &c.

**17.** The Provincial Treasurer shall procure the necessary stamps required under this Act, from time to time, as they may be required, and he shall keep an account of the numbers, denomination and amount thereof, and of the dates at which they are so procured and delivered. 27-8 V. c. 5, s. 22; 32 V. c. 42, s. 1.

And to sell the same.

**18.** The Provincial Treasurer, upon payment to him of the proper amount, shall deliver such of the said stamps as may be from time to time required, and he shall keep an account of the number, denomination and amount thereof, according as he receives and delivers them. 27-8 V. c. 5, s. 23; 32 V. c. 42, s. 1.

Allowance to be made to purchasers.

**19.** The Provincial Treasurer shall, subject to the provisions hereinafter contained, allow to any person who takes at any one time stamps to the amount of five dollars or upwards, discount at the rate of five per centum. 27-8 V. c. 5, s. 24; 32 V. c. 42, s. 1.

Lieutenant-Governor may make any person sole vendor of stamps in any locality.

**20.** The Lieutenant-Governor, by Order in Council, may, however, if he deems it expedient, make arrangements with any person or persons for the sole sale of stamps to him or them in any locality, and for such time as may be thought expedient, at any rate of discount, not exceeding, however, the rate above stated, and in such case the Treasurer shall not issue any stamps to any other person in the locality specified in such Order in Council. 27-8 V. c. 5, s. 25; 32 V. c. 42, s. 1.

Obligations of such persons.

**21.** In case an arrangement is so made with any person or persons for the sale of stamps, as under the next preceding section mentioned, each such person shall be bound at all times to keep on hand such a supply of the different kinds of stamps during the time for which the arrangement lasts, as may be reasonably expected to be required of him; and he shall be bound to sell the same to all persons who may demand the same upon payment to him of the amount or value of such stamps; and in case of any violation of any duty imposed by this section, he shall forfeit as a penalty to Her Majesty a sum not exceeding twenty dollars, and shall further be liable for the damages sustained by any person through such violation of duty. 27-8 V. c. 5, s. 26.

Penalty for contravention.

**22.** The Lieutenant-Governor in Council may, from time to time, make such regulations as may be thought expedient, for an allowance for such stamps issued under this Act as may have been spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or inadvertence may have been improperly or unnecessarily used; and such allowance shall be made either by giving other stamps in lieu of the stamps so allowed for, or by repaying the amount or value to the owner or holder thereof, after deducting the discount (if any) allowed on the sale of stamps of the like amount. 27-8 V. c. 5, s. 27; 32 V. c. 42, s. 1.

Allowance for stamps spoiled or returned.

**23.** Every person who knowingly issues, or knowingly receives, procures or delivers, or who knowingly serves or executes any writ, rule, order, matter or proceeding upon which any fee is due or payable to the Crown as aforesaid, without the same being first duly stamped under this Act, for the fee payable thereon, shall be subject for the first offence to a fine not exceeding ten dollars, for the second offence to a fine not exceeding fifty dollars, and for the third and every subsequent offence to a fine of two hundred dollars; and in default of payment of such fines shall be subject to imprisonment for a period not exceeding one month for the first offence, three months for the second offence, and one year for the third and every subsequent offence. 27-8 V. c. 5, s. 29.

Penalty for issuing, &c., any writ or proceeding without having it duly stamped.

**24.** Every person who fails or omits to obliterate and cancel any stamp in the manner and at the time hereinbefore provided, shall be subject to a fine not exceeding twenty dollars, and in default of payment thereof, to imprisonment for a period not exceeding two months. 27-8 V. c. 5, s. 30.

For not properly obliterating stamps.

**25.** All fines imposed by this Act shall be paid to the Provincial Treasurer, for the general uses of the Province, and shall be recovered before any Court having competent jurisdiction to the amount, at the instance of Her Majesty's Attorney-General for Ontario; and the production of any such writ, rule, order, matter or proceeding unstamped, or stamped for too low and insufficient a sum, or the stamp of which is not properly and sufficiently obliterated and cancelled, or the proof of any such writ, rule, order, matter or proceeding having been unstamped or not sufficiently stamped at the time when it was so issued or received, or served or executed as aforesaid, or of the stamp not having been properly and sufficiently obliterated and cancelled, shall be sufficient *prima facie* evidence of such writ, rule, order, matter or proceeding having been knowingly or wilfully so issued or received, or served or executed without being or having been first stamped, or without the stamp having been properly and sufficiently obliterated and cancelled. 27-8 V. c. 5, s. 31; 32 V. c. 42, s. 1.

Application of fines.

Proof in suits for fines.

[Section 32 of 27-8 V. c. 5 is as follows :—

Stamps not to be used over again.

32. The copying or imitating of any stamp issued under this Act shall be forgery, and shall be punishable as such, and the using again or re-issuing of any stamp which has before been used, or which has been obliterated and cancelled, as for a new and valid stamp, shall be a misdemeanor, punishable by fine not exceeding fifty dollars, or by imprisonment not exceeding two months, or by both at the discretion of the Court.

## CHAPTER 22.

### An Act respecting the Taxation of Patented Lands in Algoma.

Tax of two cents imposed, ss. 1-3	Return by Sheriff, s. 21.
Lists of lands liable to tax to be furnished by Commissioner of Crown Lands, ss. 4, 5.	Sheriff's fees, &c., ss. 22-24.
Account of taxes to be kept by Treasurer, ss. 6, 7.	Owner of a sub-division may pay taxes on his portion, s. 25.
Warrant to issue to levy taxes when three years over-due, s. 8.	Redemption by owner within a year, s. 26.
No payments to be received by Treasurer after warrant issued, s. 9.	Purchaser entitled to deed if land not redeemed, s. 27.
Proceedings by Sheriff to sell lands, ss. 10-18.	Particulars to be inserted in the deed, s. 28.
Rights of purchaser before time for redemption has expired, ss. 19, 20.	Registration of deed, s. 29.
	Book to be kept by Sheriff, s. 30.
	Where taxes payable, 31.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

An annual tax of two cents per acre imposed upon all lands granted in Algoma.

1. Except as hereinafter provided, an annual tax of two cents per acre to and for the public uses of this Province is hereby imposed upon all lands granted, or hereafter to be granted by the Crown, situate in the Provisional Judicial District of Algoma. 31 V. c. 36, s. 1.

Exemption from tax in existing municipalities.

2. The lands embraced in the Municipality of Shuniah or in any other Municipality now existing in the District of Algoma, shall not be liable to the said tax. 39 V. c. 37, s. 11.

Exemption in future municipalities from tax.

3. No lands embraced in any Municipality which may hereafter be formed within the said District of Algoma shall, after notice of the formation of such Municipality has been given to the Treasurer of the Province, be liable to the said tax,

but such lands shall remain subject to all arrears then owing on account thereof; and such arrears when collected shall be the property of the Province. 39 V. c. 37, s. 12. Arrears.

4. The Commissioner of Crown Lands shall, on or before the first day of April in each year, transmit to the Treasurer of the Province a list of all lands granted in the said District of Algoma during the year ending on the thirty-first day of December then last past, specifying in such list the number or letter by which each lot or parcel of such land is designated in the patent therefor, and when such lot or parcel of land is not designated in the patent therefor, by any number or letter, then defining the same by some general designation or description, indicating the locality thereof, and referring for a more particular description thereof to the patent therefor, and stating the date of such patent and the name of the grantee therein. 31 V. c. 36, s. 4, & s. 2, *last part*. List of such lands to be furnished annually by the Commissioner of Crown Lands to Treasurer, with number of description of each lot.

5. Every such list shall be certified under the hand of the Commissioner of Crown Lands for the time being, or the Assistant-Commissioner, and shall contain a statement of the quantity of land contained in each lot or parcel of land so granted within the said District of Algoma, and, for the purposes of this Act, the quantity specified in such list shall be held and regarded as the true and actual quantity or measurement of land contained in each such lot or parcel, and shall form the basis upon which the said tax or rate shall be computed. 31 V. c. 36 ss. 5 & 3. List to be signed by the Com. or Assistant-Com.  
The quantity of land in each lot is to be taken as correctly stated in the list.

6. The Treasurer of the Province shall provide a book or books to be kept in his office, in which he shall on receipt by him of the said annual list, and on or before the first day of July in each year, enter and set down all the lands mentioned and specified in such list, and granted by the Crown during the year ending on the thirty-first day of December then last past, and shall enter opposite each lot or parcel the quantity of land contained in such lot or parcel, and also the amount of the tax against such lot or parcel for one year, computed at the rate of two cents per acre, which shall be, and shall be regarded as the tax imposed upon each such lot or parcel, for one year, ending on the thirty-first day of December then next; and each such lot or parcel shall thereupon be and become subject to the payment of the amount so set down against the same. 31 V. c. 36, ss. 6 & 9. Treasurer to keep books in which lands and taxes to be entered.

7. The Treasurer of the Province shall also, between the first day of January and the first day of April in every year, make up and ascertain, as against every lot or parcel of land so set down in his said book or books, the arrears of taxes, if any, due thereon, on the thirty-first day of December in the preceding year, and still unpaid, and shall bring forward the same with ten per cent. added thereto; and he shall also ascertain Annual account to be kept against each lot, and ten per cent. added to arrears.



and enter against the said lots or parcels respectively, the taxes payable for the year ending on the thirty-first day of December then next, and he shall add the said arrears, if any, and the said ten per cent. thereon, and the amount of the taxes for the said then current year together, and bring forward the total amount thereof in another column; which said last-mentioned amount shall constitute the taxes then due upon every such lot or parcel of land under the authority of this Act. 31 V. c. 36, s. 10.

When taxes three years in arrear, Treasurer to issue warrant to Sheriff of Algoma or York to levy the same.

8. Whenever any portion of the taxes, so ascertained, made up, and entered as aforesaid, has been due for three years, the Treasurer of the Province shall issue a warrant under his hand and seal, directed to the Sheriff of the said District of Algoma, or to the Sheriff of the County of York, as the Treasurer may elect, commanding him to sell the land for the arrears of taxes then due thereon, with costs. 31 V. c. 36, s. 11.

Treasurer not to receive payment after issuing warrant.

9. After the issuing of such warrant, the said Treasurer shall receive no payment on account of the sums mentioned in the said warrant. 31 V. c. 36, s. 12.

Sheriff to make lists showing arrears, &c., and publish the same.

10. Immediately upon the receipt of the warrant the Sheriff shall prepare a list of all the lands included therein, and of the amount of arrears of taxes due on each lot or parcel, as stated in the warrant, and shall cause such list to be published twelve consecutive times in the *Ontario Gazette*, and for a like period in some newspaper published in the said District, if any such there be, and in some newspaper published in the City of Toronto. 31 V. c. 36, s. 13.

Notification of sale.

11. The advertisement shall contain a notification that unless said arrears are sooner paid, the Sheriff will proceed to sell the lands for taxes, on a day to be named in the advertisement. 31 V. c. 36, s. 14.

Day of sale.

12. The day of sale shall not be less than three months, nor more than six months, after the first publication of the list in the *Ontario Gazette*. 31 V. c. 36, s. 15.

Notice in Court House.

13. The Sheriff shall also post a notice similar to such advertisement on some convenient and public place, at the Court House of the said District, at least three weeks before the time of the sale. 31 V. c. 36, s. 16.

If no bidders, sale may be adjourned.

14. If, at the time appointed for the sale, no bidders appear, the Sheriff may adjourn the sale from time to time. 31 V. c. 36, s. 17.

Cost of publication.

15. The Sheriff shall in each case add to the arrears so published a proportionate share of the cost of publication, according to their amounts respectively. 31 V. c. 36, s. 18.

**16.** If the taxes are not previously paid or tendered, the Sheriff shall sell by public auction, on the day appointed for the sale, so much of the land as may be necessary and sufficient to discharge the taxes, and all lawful charges incurred in and about the sale and collection of the taxes, selling in preference such part as he considers it most to the advantage of the owner to sell first. 31 V. c. 36, s. 19.

If taxes not previously paid, lands to be sold.

**17.** If the purchaser of any parcel of land fails, on demand, to pay the Sheriff the amount of the purchase money, the Sheriff may forthwith again put up the property for sale, and sell the same. 31 V. c. 36, s. 20.

If purchase money not paid, lands to be put up again for sale.

**18.** The Sheriff, after selling any land for taxes, shall give a certificate under his hand to the purchaser, stating distinctly what part of the land has been sold, and describing the same, and also stating the quantity of land sold, the sum for which it has been sold, and the expenses of the sale, and further stating that a deed conveying the same to the purchaser or his assigns will be executed by the Sheriff on his or their demand, at any time after the expiration of one year from the date of the certificate, if the land be not previously redeemed. 31 V. c. 36, s. 21.

Sheriff to give purchaser a certificate of the land sold.

**19.** The purchaser shall, on receiving the Sheriff's certificate of sale, become the owner of the land, so far as to have all necessary rights of action and powers for protecting the same from spoliation or waste, until the expiration of the term during which the land may be redeemed; but he shall not knowingly permit any person to cut timber growing on the said land or otherwise injure the land, nor shall he do so himself, but he may use the land without deteriorating its value. 31 V. c. 36, s. 22.

Purchaser to be deemed the owner for certain purposes.

**20.** From the time of payment to the Sheriff of the full amount of the redemption money, required by this Act, the said purchaser shall cease to have any further right in, or to use the land in question. 31 V. c. 36, s. 23.

On tender by owner of taxes, purchaser's rights to cease.

**21.** Within one month after the sale, the Sheriff shall make a detailed return to the Treasurer of the Province of each separate parcel of land included in the said warrant, and shall pay over to him the money. 31 V. c. 36, s. 24.

Sheriff to make return.

**22.** The said Sheriff shall be entitled to five per cent. commission upon the sums collected by him, under such warrant, and he may also receive the sum or fee of one dollar for the sale of each separate parcel actually sold by him, and the Sheriff may add the said commission and fee to the amount of arrears included in the Treasurer's warrant on those lands in respect to which such services have been respectively performed. 31 V. c. 36, s. 25.

Sheriff's commission.

The Sheriff may add fee for searching Registry Office.

**23.** If the Sheriff cannot give a sufficient description of any lands sold by him without a search in the Registry Office of the said District of Algoma, he shall, in addition to the charge hereinbefore authorized, be entitled to charge the fee for the necessary search. 31 V. c. 36, s. 26.

No other charge or fee allowed.

**24.** Except as hereinbefore provided, the Sheriff shall not be entitled to any other fee or emolument whatever for any service rendered by him, relating to the collection of arrears of taxes on lands under the provisions of this Act. 31 V. c. 36, s. 27.

Owner of any subdivision may pay taxes on his portion, and such portion shall not be sold.

**25.** Where any lands in the said District of Algoma, for which a patent has been or may hereafter be issued, have been subdivided, the owner of any portion thereof may tender and pay the Sheriff the arrears of taxes upon the portion of which he is owner, and the costs incurred in respect thereof, and thereupon such portion shall be exempted and withdrawn from sale. 31 V. c. 36, s. 28.

Owner may redeem within one year.

**26.** The owner of any land which may be sold for taxes, under the provisions of this Act, for non-payment of taxes thereon, or his heirs, executors, administrators or assigns, may at any time within one year from the day of sale (exclusive of that day) redeem the land sold by paying to the Sheriff, for the use and benefit of the purchaser or his legal representatives, the sum paid by him, together with ten per cent. thereon, and the Sheriff shall give the party paying such redemption money, a receipt stating the sum paid, and the object of payment, and such receipt shall be evidence of redemption. 31 V. c. 36, s. 29.

If not redeemed, purchaser entitled to a deed.

**27.** If the land be not redeemed within the period so allowed for its redemption, being one year exclusive of the day of sale, as aforesaid, then on the demand of the purchaser or his assigns, or other legal representatives, at any time afterwards, and on payment of one dollar, the Sheriff shall execute and deliver to him or them a deed of sale, in duplicate, of the land sold. 31 V. c. 36, s. 30; 40 V. c. 7, *Sched. A* (14).

Particulars to be inserted in the deed, and its effect.

**28.** Such deed shall state the date and cause of the sale, and the price, and shall describe the land sold by its situation, boundaries and quantity, and shall have the effect of vesting the land in the purchaser and his heirs and assigns in fee simple, free and clear of all charges and incumbrances thereon, except taxes accrued since those for non-payment whereof it was sold. 31 V. c. 36, s. 31.

Certificate to be given for registry, its effect, &c.

**29.** The Registrar or Deputy Registrar of the said District of Algoma, upon production of the duplicate deed, shall enter the same in the Registry Book, and give a certificate of such entry and registration, in accordance with "*The Registry Act*;" but all deeds heretofore executed may be registered in the manner heretofore in force. 40 V. c. 7, *Sched. A* (15).<sup>e</sup>

Rev. Stat. c. 111.

**30.** The Sheriff shall enter in a book, to be kept by him as such Sheriff, a full description by metes and bounds of every parcel of land conveyed by him to purchasers for arrears of taxes, with an index thereto, and such book, after such entries therein have been made by him, shall be kept by him amongst the records of his office. **31 V. c. 36, s. 33.**

Sheriff shall keep a book in which the particulars of all sales shall be entered.

**31.** The taxes imposed by this Act shall be payable at the office of the Treasurer of the Province, in the City of Toronto; and for the purpose of this Act shall be considered to be payable on the first day of October in each year; but the Treasurer may appoint one or more agents, resident in the said District of Algoma, to receive the said taxes, or any part or portion thereof, and payment to such agent or agents so authorized shall be considered payment to the said Treasurer. **31 V. c. 36, s. 34.**

Taxes payable at Treasurer's office in Toronto, on 1st Oct., but agents may be appointed in Algoma to receive the same.

## 2. *Public Lands.*

CHAP. 23.—Sale and Management of Public Lands, p. 249.

24.—Free Grants to actual Settlers in Public Lands, p. 261.

25.—Commission for enquiring into claims to Crown Lands, by heirs, devisees and assignees of original nominees, where no patent has issued, p. 267.

26.—Management of Timber on Public Lands, and granting of Timber Licenses, p. 275.

27.—Investigation into and punishment of trespasses to Public Lands, p. 281.

28.—Ontario Municipalities Fund derived from Clergy Reserves, p. 287.

29.—General Mining Act, p. 290.

## CHAPTER 23.

### An Act respecting the Sale and Management of Public Lands.

Short title, s. 1.

Interpretation, s. 2.

Crown Lands Department, and officers and agents connected therewith, ss. 3-11.

Claims to lands under former Acts, &c., s. 12.

Crown lands may be set apart for certain public purposes, s. 13.



## SALES AND LICENSES OF OCCUPATION, ss. 14-21.

Price to be fixed by Lieutenant-Governor in Council, s. 14.

Licenses of occupation to intending purchasers, &c., s. 15.

Licenses before 23rd April, 1860, s. 16.

Registration of assignments of claim in the C. L. Department, s. 17.

Tax deeds may be acted upon by Department and patents issued, ss. 18-20.

Commissioner may decide claims by heirs, &c., of deceased nominees, s. 21.

## FORFEITURE OF CLAIMS AND ENFORCEMENT OF FORFEITURE, &amp;c.

Cancellation of sales for fraud, s. 22.

Recovery of possession in such case, s. 23.

Distress warrant for rent of public lands in arrear, s. 24.

## PATENTS ISSUED IN ERROR, &amp;c.

Where clerical errors, new patent may issue, s. 25.

Where double or inconsistent grants, purchase-money returned or other lands assigned, s. 26.

Compensation where deficiency of land by means of false survey, ss. 27-28.

Patents issued in error may be declared void by Court of Chancery, s. 29.

## REDUCTION IN PRICE OF CERTAIN LANDS SOLD BEFORE 1ST JULY, 1867, ss. 30-34.

## TRANSMISSION OF LISTS OF PUBLIC LANDS FOR REGISTRATION AND ASSESSMENT PURPOSES.

Annual list of lands sold, but for which patents have not issued, to be sent to Registrars, s. 35.

Similar list to Treasurers for assessment purposes, s. 36.

List of lands patented for Registrars, s. 37.

## PENALTIES.

Employees of C. L. Department trafficking in scrip or taking fees, s. 38.

Agents giving false information, s. 39.

Hindering bidders at sales, s. 40.

## MISCELLANEOUS.

Notices in respect to Crown lands, how given, s. 41.

Publication of list of lands for sale, s. 42.

Affidavit for purposes of this Act before whom may be made, ss. 43-45.

Attested copies of Departmental records to be evidence, s. 46.

Non-observance of certain conditions not to affect titles to lands granted before 23rd April, 1860, s. 47.

Sales and appropriations of water lots declared to be legal, s. 48.

Short title.

1. This Act may be cited as "*The Public Lands Act*."

Definition of the term "Public Lands."

2. In the construction of this Act the term "Public Lands" shall be held to apply to lands heretofore designated or known as Crown Lands, School Lands, or Clergy Lands, which designations, for the purposes of administration, shall still continue. 23 V. c. 2, s. 38.

## CROWN LANDS DEPARTMENT.

Department and Commissioner of Crown Lands.

3. There shall continue to be a Department for the management and sale of the Public Lands and Forests, to be called "The Department of Crown Lands;" and the same shall be presided over by "The Commissioner of Crown Lands" for the time being. 23 V. c. 2, s. 1.

Assistant Commissioner of Crown Lands—his

4. There shall continue to be an "Assistant Commissioner of Crown Lands," who shall be appointed from time to time, as a vacancy occurs, by the Lieutenant-Governor in Council, and

shall perform such duties in the said Department as may be assigned to him by the Lieutenant-Governor in Council, or the Commissioner of Crown Lands, and shall preside over the Department and discharge therein the duties of the Commissioner of Crown Lands in the absence of that officer or in the case of a vacancy in the office of Commissioner, and shall, before entering on the duties of his office, take an oath faithfully to discharge the same, which oath shall be administered by the Commissioner of Crown Lands, or any person appointed by the Lieutenant-Governor for that purpose. 23 V. c. 2, s. 2.

appointment,  
duties and  
oath of office.

5. The Department and office of the Surveyor-General of this Province shall continue to be consolidated with the Department and office of the Commissioner of Crown Lands, under the superintendence and management of the last named officer. 23 V. c. 2, s. 3.

Departments  
of Surveyor-  
General and  
Commissioner  
of Crown  
Lands consoli-  
dated.

6. All the powers and duties which, before the seventeenth day of March, 1845, were assigned to or vested in the Surveyor-General, shall be vested in the Commissioner of Crown Lands; and the said powers and duties shall be exercised and performed by him, or by any assistants or clerks in his Department or office, or by any person whom he, by an instrument in writing under his hand, authorizes to that effect, and under such name or designation of office as he may fix, as effectually as they might before the said day have been exercised or performed by the Surveyor-General. 23 V. c. 2, s. 4.

Powers and  
duties of  
the Surveyor-  
General to be  
exercised and  
performed  
by the Com-  
missioner of  
Crown Lands.

7. The Lieutenant-Governor may from time to time appoint officers and agents to carry out this Act and Orders in Council under it, which officers and agents shall be paid in such manner and at such rates as the Lieutenant-Governor in Council may direct. 23 V. c. 2, s. 5.

Lieutenant-  
Governor  
may appoint  
officers and  
agents under  
this Act.

8. The Lieutenant-Governor in Council shall require from the Commissioner of Crown Lands and from the Assistant Commissioner, and from every agent appointed under him, security for the due performance of his duty. 23 V. c. 2, s. 6.

Commissioner,  
Assistant  
Commissioner  
and agents to  
give security.

9. No County or resident agent for the sale of Public Lands shall, within his division, directly or indirectly, unless under an Order of the Lieutenant-Governor in Council, purchase any land which he is appointed to sell, or become proprietor of or interested in any such land, during the time of his agency, and any such purchase or interest shall be void; and if any such agent offends in the premises, he shall forfeit his office and the sum of four hundred dollars for every such offence, to be recovered in action of debt by any person who may sue for the same. 23 V. c. 2, s. 7.

Purchase, etc.,  
by agent of  
land, etc., in  
his agency to  
be void, and  
agent to forfeit  
his office and  
\$400.

10. The Commissioner of Crown Lands shall annually lay before the Legislative Assembly, and within ten days after the

Commissioner  
to report

annually to the Legislature. meeting thereof, a report of the proceedings, transactions and affairs of the Department during the year then next preceding. 23 V. c. 2, s. 8.

Lieutenant-Governor in Council may make orders for carrying out this Act.

**11.** The Lieutenant-Governor in Council may, from time to time, make such Orders as are necessary to carry out the provisions of this Act according to their obvious intent, or to meet cases which may arise and for which no provision is made by this Act; and such Orders shall be published in the *Ontario Gazette*, and in such newspapers as the Commissioner of Crown Lands may direct, and shall be laid before the Legislative Assembly within the first ten days of the Session next after the date thereof; but no such Order shall be inconsistent with this Act, save that the powers herein given to the Commissioner of Crown Lands may be exercised by the Lieutenant-Governor in Council, and shall be subject to any Order in Council regulating or affecting the same from time to time. 23 V. c. 2, s. 10.

Proviso.

Determination of claim arising under repealed Acts, Orders in Council, &c.

**12.** Any claim to land arising under any Act, or under any Order in Council, or other regulation of the Government in force before the twenty-third day of April, one thousand eight hundred and sixty, shall be determined by the Commissioner of Crown Lands, subject to such arrangement and order in respect to improvements on any particular lands as the Commissioner may think just; or the same may be satisfied by issuing, to the party entitled, land scrip, or a certificate entitling him to purchase land to such an amount as the Commissioner of Crown Lands may find just; but no claim for land arising from Militia, United Empire Loyalist, or Military Rights, shall be entertained unless the same was actually located or admitted, or proof in support thereof sufficient in the opinion of the Commissioner of Crown Lands furnished, before the passing, on the fourteenth of June, eighteen hundred and fifty-three, of the Act sixteen<sup>th</sup> Victoria, chapter one hundred and fifty-nine. 23 V. c. 2, s. 12.

Lands may be set apart for certain public purposes, and free grants thereof made in trust.

**13.** The Lieutenant-Governor in Council may set apart and appropriate such of the Crown Lands as he may deem expedient for the sites of Wharves or Piers, Market Places, Gaols, Court Houses, Public Parks or Gardens, Town Halls, Hospitals, Places of Public Worship, Burying Grounds, Schools, and for purposes of Agricultural Exhibitions, and for other like public purposes, and for Model or Industrial Farms; and at any time before the issue of letters patent therefor, may revoke such appropriation as seems expedient; and may make free grants for the purposes aforesaid, and the trust and uses to which they are to be subject shall be expressed in the letters patent; but no such grant shall be for more than ten acres in any one instance, and for any one of the purposes aforesaid, except for a Model or Industrial Farm, which shall not exceed one hundred acres. 23 V. c. 2, s. 14.

Proviso.

SALES AND LICENSES OF OCCUPATION AND ASSIGNMENT  
THEREOF.

**14.** The Lieutenant-Governor in Council may, from time to time, fix the price per acre of the public lands, and the terms and conditions of sale and of settlement and payment. 23 V. c. 2, s. 15.

Lieut.-Gov. to fix price of public land per acre.

**15.** The Commissioner of Crown Lands may issue, under his hand and seal, to any person who has purchased or may purchase, or is permitted to occupy, or has been entrusted with the care or protection of any Public Land, or who has received or been located on any Public Land as a free grant, an instrument in the form of a license of occupation; and such person or the assignee, by an instrument registered under this or any former Act, providing for registration in such cases, may take possession of and occupy the land therein comprised, subject to the conditions of such license, and may thereunder, unless the same has been revoked or cancelled, maintain suits in law or equity against any wrongdoer or trespasser, as effectually as he could do under a patent from the Crown;—and such license of occupation shall be *prima facie* evidence for the purpose of possession by such person, or the assignee under an instrument registered as aforesaid, in any such suit, but the same shall have no force against a license to cut timber existing at the time of the granting thereof. 23 V. c. 2, s. 16.

Licenses of occupation to be issued to intending settlers—their effect.

As to prior license to cut timber.

**16.** Every license of occupation granted prior to the twenty-third day of April, one thousand eight hundred and sixty, and every certificate of sale or receipt for money received on the sale of Public Lands, and every location ticket theretofore granted or made by the Commissioner of Crown Lands or any agent of his, so long as the sale or grant to which such license of occupation, receipt, certificate, or location ticket relates is in force, and not rescinded, shall have the same force, and shall enure to the benefit of the party to whom the same was granted, or to the assignee, by instrument registered as aforesaid, in the same manner and to the same extent as the instrument in the form of a license of occupation mentioned in the next preceding section. 23 V. c. 2, s. 17.

Licenses of occupation, certificates, receipts and location tickets issued before 23rd April, 1860, to have the same effect.

**17.** The Commissioner of Crown Lands shall keep a book for registering (at the option of the parties interested) the particulars of any assignment made as well by the original nominee, purchaser, locatee or lessee of Public Lands, or his heir or legal representative, as by any subsequent assignee of any such Public Lands or the heir or legal representative of such assignee; and upon such assignment being produced to the Commissioner, with an affidavit of due execution thereof, and of the time and place of such execution, and the names, residences and occupations of the witnesses, the said Commissioner shall cause the material parts of every such assignment to be registered in

Commissioner to keep a register of assignments of claims to lands; on what proof entries shall be made therein, their effect, &c.



such book of registry, and shall cause to be endorsed on every such assignment a certificate of such registration, to be signed by himself or by the Assistant Commissioner, or by any officer of the Department by him authorized to sign such certificates.

First registered assignment to be valid.

Proviso.

2. Every such assignment so registered shall be valid against any one previously executed, but subsequently registered or unregistered; but all assignments to be registered must be unconditional, and all the conditions of the sale, grant or location must have been complied with, or dispensed with by the Commissioner of Crown Lands, before such registration is made.

On what proof assignment may be registered when witness dead or absent.

3. If any subscribing witness to any such assignment is deceased, or has left the Province, the said Commissioner may register such assignment upon the production of an affidavit proving the death or absence of such witness and his handwriting, or the handwriting of the party making such assignment. 23 V. c. 2, s. 18.

Deeds executed by the proper officers for sales of lands for taxes may be acted upon by the Commissioner of Crown Lands.

18. Wherever the proper officer or officers having by law the power or authority to make or execute deeds on sales of lands for taxes have heretofore made or executed, or hereafter make or execute any deed purporting to grant, sell or convey any land or portion of land, the fee of which is in Her Majesty, or purporting to grant, sell or convey the interest therein of any locatee or purchaser from the Crown, and such deed recites, or purports to be based upon a sale for taxes of such land or interest, the Commissioner of Crown Lands may act upon and treat such deed as a valid transfer of all the right and interest of the locatee or purchaser from the Crown, and of every person claiming under him, in or to such land or portion of land to the grantee named in such deed, and may cause a patent for such land to be issued to such grantee on completion of the original conditions of location for sale, unless such deed is questioned before a Court of competent jurisdiction by some person interested in such land within two years from the time of sale, and unless notice of such deed being so questioned, within the time aforesaid, is given to the Commissioner of Crown Lands. 34 V. c. 6, s. 1; 40 V. c. 7. *Sched. A* (16).

Act not to apply to certain deeds for lands sold for taxes.

19. The preceding section shall not apply to any deed based or purporting to be based upon a sale for taxes made prior to the first day of January, in the year one thousand eight hundred and sixty-eight. 34 V. c. 6, s. 2.

This Act not to affect the power of the Commissioner to cancel sales, &c. See ss. 22, 25.

20. The two preceding sections shall not interfere with the authority of the Commissioner of Crown Lands under this Act to cancel the original sale, grant or location of any such land. 34 V. c. 6, s. 3.

**21.** On any application for a patent by the heir, assignee or devisee of the original nominee of the Crown, the Commissioner of Crown Lands may receive proof in such manner as he may direct and require in support of any claim for a patent when the original nominee, or any one claiming under him, is dead, and upon being satisfied that the claim has been equitably and justly established, may allow the same and cause a patent to issue accordingly: But nothing in this section shall limit the right of the party claiming a patent to make his application at any time to the Commissioners under *The Act respecting the Heir, Devisee and Assignee Commission*. 23 V. c. 2, s. 19; 40 V. c. 7. *Sched. A* (17).

Commissioner may receive proof in support of claim for patent by heir, &c., of deceased nominee.

Power to apply to Heir and Devisee Commissioners under Rev. Stat. c. 25, reserved.

#### FORFEITURE OF CLAIMS, AND ENFORCEMENT OF FORFEITURE.

**22.** If the Commissioner of Crown Lands is satisfied that any purchaser, grantee, locatee or lessee of any Public Land, or any assignee claiming under or through him, has been guilty of any fraud or imposition, or has violated any of the conditions of sale, grant, location or lease, or of the license of occupation, or if any such sale, grant, location or lease or license of occupation has been or is made or issued in error or mistake, he may cancel such sale, grant, location, lease or license, and resume the land therein mentioned, and dispose of it as if no sale, grant, location or lease thereof had ever been made. 23 V. c. 2, s. 20.

Sale, &c., of land may be cancelled in case of fraud or error.

**23.** Where any purchaser, lessee or other person refuses or neglects to deliver up possession of any land after revocation or cancellation of the sale, grant, location, lease or license of occupation thereof as aforesaid, or when any person is wrongfully in possession of public land and refuses to vacate or abandon possession of the same, the Commissioner of Crown Lands may apply to the County Judge of the County in which the land lies for an order in the nature of a writ of *habere facias possessionem*, or writ of possession, and the said Judge, upon proof to his satisfaction that the right or title of the party to hold such land has been revoked or cancelled as aforesaid, or that such person is wrongfully in possession of Public Land, shall grant an order upon the purchaser, lessee or person in possession, to deliver up the same to the Commissioner of Crown Lands, or person by him authorized to receive the same; and such order shall have the same force as a writ of *habere facias possessionem*, or writ of possession; and the Sheriff, or any Bailiff or person to whom the same may be entrusted for execution by the Commissioner of Crown Lands, shall execute the same in like manner as he would execute such writ in an action of ejectment or possessory action. 23 V. c. 2, s. 21.

Mode of obtaining possession, if settler refuses to deliver up land on revocation of license, &c.

**24.** Wherever any rent payable to the Crown on any lease of Public Lands is in arrear, the Commissioner of Crown Lands, or any agent or officer appointed under this Act and authorized by the Commissioner of Crown Lands to act in such cases, may

Commissioner or his agent or other officer may issue distress warrant for rent of

public lands in issue a warrant, directed to any person or persons by him named  
arrear ; therein, in the shape of a distress warrant, as in ordinary cases  
of Landlord and Tenant ; and the same proceedings may be had  
thereon for the collection of such arrears as in the said last-  
mentioned cases ; or an action of debt as in ordinary cases of  
Or action may rent in arrear may be brought therefor in the name of the  
be brought. Commissioner of Crown Lands, but demand of rent shall not be  
necessary in any case. 23 V. c. 2, s. 21 (2).

#### PATENTS ISSUED IN ERROR.

Erroneous pa- **25.** Wherever a patent has been issued to or in the name  
tents may be of the wrong party, through mistake in the Crown Lands De-  
cancelled and partment, or contains any clerical error or misnomer, or wrong  
correct ones description of the land thereby intended to be granted, the  
issued when Commissioner of Crown Lands (there being no adverse claim)  
there is no may direct the defective patent to be cancelled and a correct  
adverse claim. one to be issued in its stead, which corrected patent shall  
relate back to the date of the one so cancelled, and have the  
same effect as if issued at the date of such cancelled patent.  
23 V. c. 2, s. 22.

In cases of **26.** In all cases in which grants or letters patent have  
double or in- issued for the same land inconsistent with each other through  
consistent error, and in all cases of sales or appropriations of the same  
grants, the land inconsistent with each other, the Commissioner of Crown  
purchase mo- Lands may, in cases of sale, cause a repayment of the purchase  
ney may be money, with interest, or when the land has passed from the  
repaid with original purchaser or has been improved before a discovery of  
interest—or the error, or, when the original grant or appropriation was a  
other land free grant, he may in substitution assign land or grant a certifi-  
may be as- cate entitling the party to purchase Crown Lands, of such value  
signed—or a and to such extent as to him, the Commissioner of Crown Lands,  
land certifi- seems just and equitable under the circumstances ; but no  
cate may be such claim shall be entertained unless it is preferred within  
granted. five years from the discovery of the error. 23 V. c. 2, s. 23.

Proviso.

Compensation **27.** Wherever by reason of false survey or error in the  
for deficiency books or plans in the Crown Lands Department, any grant,  
of land by sale or appropriation of land is found to be deficient, or any  
reason of false parcel of land contains less than the quantity of land men-  
survey or error tioned in the patent therefor, the Commissioner of Crown  
in departmen- Lands may order the purchase money of so much land as is  
tal books or deficient, with the interest thereon from the time of the appli-  
plans, cation therefor, or if the land has passed from the original  
purchaser, then the purchase money which the claimant  
(provided he was ignorant of a deficiency at the time  
of his purchase) has paid for so much of the land as is deficient,  
with interest thereon from the time of the application there-  
for, to be paid to him in land or in money, as he, the Com-  
missioner of Crown Lands, may direct ; or in case of a free  
grant, he may order a grant of other land equal in value to the



land so intended as a free grant at the time such grant was made : but no such claim shall be entertained unless application has been made within five years from the date of the patent, nor unless the deficiency is equal to one-tenth of the whole quantity described as being contained in the particular lot or parcel of land granted. 23 V. c. 2, s. 24. Proviso.

**28.** Compensation awarded under the twenty-sixth and twenty-seventh sections of this Act (except where land is specifically assigned therefor by the Commissioner of Crown Lands) and all claims therefor shall be treated as personal estate, and dealt with accordingly. 23 V. c. 2, s. 37. Compensation under ss. 26 and 27 to be personalty—Except, in certain cases.

**29.** In all cases wherein patents for lands have issued through fraud, or in error or improvidence, the Court of Chancery may, upon action or suit instituted respecting such lands situate within its jurisdiction, and upon hearing of the parties interested, or upon default of the said parties after such notice of proceedings as the said Court orders, decree such patents to be void ; and upon a registry of such decree in the office of the Provincial Secretary, such patents shall be void to all intents. Court of Chancery may decree patents issued in error, &c., to be void; decree to be registered.

**2.** The practice in such cases shall be regulated by Orders to be from time to time made by the said Court. 23 V. c. 2, s. 25. Practice in such cases.

#### REDUCTION IN PRICE OF CERTAIN LANDS SOLD BEFORE 1ST JULY, 1867.

**30.** The Lieutenant-Governor in Council shall have authority to reduce the price of any Crown Land, Clergy Land, Common or Grammar School Land sold by the Crown previously to the first day of July, in the year one thousand eight hundred and sixty-seven, where it appears that such land has been sold at a price beyond its fair value, and that such price remains unpaid. 34 V. c. 20, s. 1 ; 35 V. c. 22, s. 1. Reduction in the price of lands sold by the Crown beyond their fair value.

**31.** The Lieutenant-Governor in Council shall also have authority to make such abatement as may appear equitable and just, of the arrears of interest upon the unpaid instalments of the purchase money of any Crown Land, Clergy Land, Common or Grammar School Land sold by the Crown previously to the first day of July aforesaid : but such reductions and abatements shall be made only in respect of, and in proportion to, the share or interest of this Province in such lands, and the price thereof, and shall not in anywise extend to or affect the share or interest of the Province of Quebec in such lands or the price thereof. 34 V. c. 20, s. 2 ; 35 V. c. 22, s. 2. Abatement of interest upon lands sold by the Crown beyond their fair value.

**32.** Before any such reduction or abatement as aforesaid is made, the land in respect of which such reduction or abatement is proposed shall be examined and valued by one or more in- Inspection of lands.



spector or inspectors, appointed for that purpose by the Lieutenant-Governor in Council, or by the Commissioner of Crown Lands. 34 V. c. 20, s. 3; 35 V. c. 22, s. 4.

Persons entitled to a reduction or abatement.

**33.** Such reduction and abatement shall be confined to cases in which the purchaser from the Crown or person claiming under him is in occupation of such land, and is an actual settler thereon, or on land adjacent thereto. 34 V. c. 20, s. 4; 35 V. c. 22, s. 5.

Authority of Commissioner of Crown Lands to make reduction.

**34.** The Lieutenant-Governor may, by Order in Council, confer upon the Commissioner of Crown Lands authority to make such reduction or abatement as aforesaid, subject to the provisions of this Act, and subject also to such other provisions, not inconsistent with this Act, as may be embodied in any Order in Council. 34 V. c. 20, s. 5; 35 V. c. 22, s. 6.

#### ANNUAL LISTS OF LANDS GRANTED, &C., BY THE CROWN.

Lists of public lands sold to be transmitted yearly to Registrars, and notice of cancellation of sales, &c., to be given to them—effect as to taxes.

**35.** The Commissioner of Crown Lands shall transmit, as early as possible in each year, to the Registrar of every County and other Registration Division, a list of the Public Lands sold, granted, leased or appropriated or set apart to any person, or for which licenses of occupation have been granted in such County or other Registration Division during the year next preceding, and for which no patents have issued, which said lands shall be liable to the assessed taxes in the Townships in which they respectively lie from the date of such sale, license or appropriation; and the purchaser, at the sale of any such lands for taxes, shall, as heretofore, have, in the lands so sold, the same rights only as the person entitled to claim under the Crown at the time of such sale; and the Commissioner of Crown Lands shall in like manner apprise each such Registrar of the cancellation of any license of occupation or patent, or of any sale, grant, lease, location, or appropriation; from which time, until resold, leased or regranted, the land affected shall cease to be liable to taxes. 23 V. c. 2, s. 27.

Annual lists of lands granted, etc., to be furnished by Commissioner of Crown Lands to County Treasurers.

**36.** The Commissioner of Crown Lands shall, in the month of February in every year, transmit to the Treasurer of every County a list of all the land within the County located as free grants, sold or agreed to be sold by the Crown, or leased, or in respect of which a license of occupation issued during the preceding year. 32 V. c. 36, s. 108. *See also Rev. Stat. c. 180, s. 106.*

Provincial Secretary to furnish Statement of Crown grants once every three months.

**37.** The Provincial Secretary shall once in every three months, furnish to the Registrar of every Registration Division, a statement containing a list of the names of all persons to whom patents have issued from the Crown for grants of land within the Registration Division since the former statements, and of all persons whose patents have been cancelled since the former statements, and with such general or particular descrip-

tions as the case may require ; and the Commissioner of Crown Lands shall furnish copies of all plans or maps of Towns and Townships within the Registration Division which have not been already furnished, and in cases where no proper survey of any Township has been made he may cause a proper survey and plan thereof to be made and furnished. 31 V. c. 20, s. 81; 40 V. c. 7, Sched. A (130). See also *Rev. Stat.* c. 111, s. 91.

Maps to be furnished by Commissioner of Crown Lands.

## OFFENCES AND PENALTIES.

**38.** No person holding an office created by or continued under this Act (save in the case provided for in the ninth section), or employed in the Department, shall, while holding such office or employment, directly or indirectly purchase any right, title or interest in any public land, or any land scrip, nor deal nor traffic in the same, either in his own right, or by the interposition of any other person, or in the name of any other person in trust for himself, nor shall take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office or employment ; And any person offending in the premises shall forfeit his office or employment, and be liable to a penalty of four hundred dollars, to be recovered in action of debt by any person suing for the same. 23 V. c. 2, s. 31.

Employees of the Crown Land Department not to traffic in public lands or land scrip, or take fees for official labour.

Penalty.

**39.** If any agent, appointed or continued in office under this Act, knowingly and falsely informs, or causes to be informed, any person applying to him to locate or purchase any land within his division and agency, that the same has already been located, assigned or purchased, or refuses to permit the person so applying to purchase the same, or (where entitled), to locate the same, according to existing regulations, such agent shall be liable therefor to the person so applying, in the sum of five dollars for each acre of land which the person so applying offered to locate or purchase, to be recovered by action of debt in any Court of Record having jurisdiction to the amount. 23 V. c. 2, s. 32.

Penalty on agent knowingly giving false information, &c.

[Section 33 of 23 V. c. 2, as follows :—

33. If any person or persons shall, before or at the time of the public sale of any of the lands of the Province, by intimidation, combination, or unfair management, hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale ; every such offender, his or their aiders and abettors, shall for every such offence be guilty of a misdemeanor, and on conviction thereof shall be liable to a fine not exceeding four hundred dollars, or imprisonment for a term not exceeding two years, or both, in the discretion of the Court.]

Hindering bidders at public sales of lands of the Province by intimidation, &c., how punished.

## MISCELLANEOUS PROVISIONS,

**40.** Where by law or by any deed, lease or agreement relating to any of the lands herein referred to, any notice is required to

How notices required to

be given in respect of Crown Lands.

be given, or any act to be done, by or on behalf of the Crown, such notice may be given and act done by or by the authority of the Commissioner of Crown Lands. 23 V. c. 2, s. 21 (3).

Lists of public lands for sale to be published.

**41.** The Commissioner of Crown Lands shall cause lists of the Public Lands for sale in the several Townships in Ontario to be made out from time to time, and advertised or published as he deems most advisable for ensuring general information. 23 V. c. 2, s. 26.

Before whom affidavits under this Act may be made

**42.** All affidavits required under this Act, or intended to be used in reference to any claim, business or transaction in the Crown Lands Department, may be taken before the Judge or Clerk of any County Court, or any Justice of the Peace, or any Commissioner for taking affidavits in any of the Courts, or the Commissioner of Crown Lands, or any agent of the Commissioner of Crown Lands, or the Assistant Commissioner of Crown Lands, or any Surveyor duly licensed and sworn, appointed by the Commissioner of Crown Lands to inquire into or take evidence or report in any matter submitted or pending before such Commissioner; or if made out of the Province, before the Mayor or Chief Magistrate of, or the British Consul in, any City, Town or other Municipality. 23 V. c. 2, s. 28.

Commissioner and Assistant Commissioner of Crown Lands may issue commissions.

**43.** The Commissioner or the Assistant Commissioner of Crown Lands may authorize, by a commission under the hand and seal of such Commissioner or Assistant Commissioner, any person who is employed in the service of the Crown Lands Department, to take affidavits and affirmations in any part of Ontario, in respect of any matter or inquiry having reference to any business of the said Department, or of any matter or inquiry in respect of which the said Department is interested, or which affects the revenue of Ontario. 36 V. c. 5, s. 3.

Duration of such commissions.

**44.** The authority granted by virtue of any commission under the preceding section, may be in such commission limited to a certain period of time, or may be expressed to be while the Commissioner receiving authority under the said commission remains in the service of the said Department; but the same shall in any event determine upon the said Commissioner ceasing to be employed in such service. 36 V. c. 5, s. 4.

Attested copies of departmental records, &c., to be evidence.

**45.** Copies of any records, documents, books or papers belonging to or deposited in the said Department, attested under the signature of the Commissioner, or of the Assistant Commissioner, shall be competent evidence in all cases in which the original records, documents, books or papers, could be evidence. 23 V. c. 2, s. 30.

Patent or title of patentee or of any subsequent pur-

**46.** With a view to remove doubts, and to quiet the titles to certain lands granted before the twenty-third day of April, one thousand eight hundred and sixty, it is enacted, that the non-

observance and non-fulfilment of the condition imposed in and by certain patents issued for Public Lands, of taking the oaths which may have been before the said date prescribed, in case of any subsequent sale, conveyance, enfeoffment or exchange, by the patentee, and of recording such oaths, within twelve months after having taken possession, in the office of the Provincial Secretary, or of performing certain settlement duties, shall not affect in any way the patent or title of any patentee, or of any subsequent purchaser or proprietor. 23 V. c. 2, s. 34.

chaser not  
affected by  
non-observance of  
certain condi-  
tions.

47. It has been heretofore, and it shall be hereafter lawful for the Lieutenant-Governor in Council to authorize sales or appropriations of land covered with water in the harbours, rivers and other navigable waters in Ontario, under such conditions as it has been, or it may be, deemed requisite to impose, but not so as to interfere with the use of any harbour as a harbour, or with the navigation of any harbour, river or other navigable water. 23 V. c. 2, s. 35.

Sales and ap-  
propriations  
of water lots  
declared to be  
legal.

## CHAPTER 24.

### An Act respecting Free Grants and Homesteads to Actual Settlers on Public Lands.

Preliminary, s. 1.	Alienation by locatee—
Free Grants limited, s. 2.	Not before patent issued, s. 14.
Free Grants to actual settlers, ss. 3-13.	To be by deed of locatee and his wife jointly, s. 15.
In certain territory, s. 4.	Statements to be made in patent, s. 16.
To whom made, and amount of grant, ss. 5, 6.	Rights of widow of locatee, s. 17.
Affidavit of locatee to obtain grant, s. 7.	Exemption of land from liability for debts of locatee, ss. 18, 19.
When locatee entitled to patent, s. 8.	Settlers' Homestead Fund—Lands formerly aided to continue, subject to Acts in that behalf, s. 20.
Settlement duties to be performed, s. 9.	Remission of sums due by former settlers in certain Free Grant Lands. ss. 21-22.
Timber and minerals reserved, s. 10.	
Crown may grant timber licenses over Free Grant lands, ss. 11-13.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Free Grants and Home-* Short title.



Rev.Stat.c.23. *steads Act*," and shall be taken and read as "part of "*The Public Lands Act*." 31 V. c. 8, s. 17.

Free grants  
limited.  
Rev. Stat. c. 23.

2. Except as hereinafter and in the twelfth and thirteenth sections of "*The Public Lands Act*" provided, no free grant of Public Land shall be made, but patents may issue for all lands located as free grants before the twenty-eighth day of February, one thousand eight hundred and sixty-eight, under section thirteen of "*The Public Lands Act of 1860*," as if this Act had not been passed. 23 V. c. 2, s. 11; 31 V. c. 8, s. 3.

Free grants  
may be made  
to actual set-  
tlers.

3. The Lieutenant-Governor in Council may appropriate any Public Lands considered suitable for settlement and cultivation, and not being mineral lands or pine timber lands, as free grants to actual settlers, under such regulations as shall from time to time be made by Order in Council not inconsistent with the provisions of this Act. 31 V. c. 8, s. 4.

Such grants  
to be confined  
to lands with-  
in certain  
territory.

4. Such grants or appropriations shall be confined to lands surveyed or hereafter to be surveyed, situate within the tract or territory composed of the Districts of Algoma and Nipissing, and of the lands lying between the Ottawa River and the Georgian Bay to the west of a line drawn from a point opposite the south-east angle of the Township of Palmerston, north-westerly along the western boundaries of the Townships of North Sherbrooke, Lavant, Blithfield, Admaston, Bromley, Stafford and Pembroke to the Ottawa River, and to the north of the rear or northerly boundaries of the Townships of Oso, Olden, Kennebec, Kaladar, Elzevir, Madoc, Marmora, Belmont, Dummer, Smith, Ennismore, Somerville, Laxton, Carden, Rama, and of the River Severn. 31 V. c. 8, s. 5.

Locatee de-  
fined.

5. The person to whom any land may be allotted or assigned under such regulations for a free grant thereof shall be considered as located for said land within the meaning of this Act, and is hereinafter called the locatee thereof. 31 V. c. 8, s. 6.

Who may be  
located, and  
for what quan-  
tity of land.

6. No person shall be located for any land under this Act or said regulations unless such person is of the age of eighteen years or upwards, nor shall any person be so located for any greater quantity than two hundred acres. 32 V. c. 20, s. 1.

Affidavit to be  
made by party  
desiring loca-  
tion.

7. Before any person is located for any land as aforesaid, such person shall make an affidavit, to be deposited with the agent authorized to make such location, stating that he has not been located for any land under this Act or under said regulations, and that he is of the age of eighteen years or upwards, and believes the land for which he applies or desires to be located is suited for settlement and cultivation, and is not valuable chiefly for its mines, minerals or pine timber, and that such location is desired for his benefit, and for the

purpose of actual settlement and cultivation of such land, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever, nor for the purpose of obtaining, possessing or disposing of any of the pine trees growing or being on the said land, or any benefit or advantage therefrom, or any gold, silver, copper, lead, iron or other mines or minerals, or any quarry or bed of stone, marble or gypsum thereon. 31 V. c. 8, s. 8.

8. No patent shall issue for any land located under this Act or under said regulations until the expiration of five years from the date of such location, nor until the locatee or those claiming under him or some of them have performed the following settlement duties, that is to say: have cleared and have under cultivation at least fifteen acres of the said land, (whereof at least two acres shall be cleared and cultivated annually during the five years next after the date of the location, to be computed from such date,) and have built a house thereon fit for habitation at least sixteen feet by twenty feet, and have actually and continuously resided upon and cultivated the said land for the term of five years next succeeding the date of such location, and from thence up to the issue of the patent, except that the locatee shall be allowed one month from the date of the location to enter upon and occupy the land, and that absence from the said land for in all not more than six months during any one year (to be computed from the date of the location) shall not be held to be a cessation of such residence, provided such land be cultivated as aforesaid. 31 V. c. 8, s. 9.

Patent not to issue before expiration of five years.

Settlement duties required.

9. On failure in performance of the settlement duties aforesaid, the location shall be forfeited, and all rights of the locatee or of any one claiming under him in the land, shall cease. 31 V. c. 8, s. 9.

Location to be forfeited if settlement duties not performed.

10. All pine trees growing or being upon any land so located, and all gold, silver, copper, lead, iron or other mines or minerals, shall be considered as reserved from said location, and shall be the property of Her Majesty, except that the locatee, or those claiming under him, may cut and use such trees as may be necessary for the purpose of building, fencing and fuel on the land so located, and may also cut and dispose of all trees required to be removed, in actually clearing said land for cultivation, but no pine trees (except for the necessary building, fencing and fuel as aforesaid) shall be cut beyond the limit of such actual clearing before the issuing of the patent; and all pine trees so cut and disposed of (except for the necessary building, fencing and fuel as aforesaid), shall be subject to the payment of the same dues as are at the time payable by the holders of licenses to cut timber or saw logs.

Timber, minerals, &c., reserved.

Locatee may use timber for building and fencing, &c., on the land.

May also cut and dispose of timber within limits of actual clearing.

Timber cut to be subject to dues.

2. All trees remaining on the land at the time the said patent issues shall pass to the patentee. 31 V. c. 8, s. 10.

Trees on land when patent issues to pass.

Acts relating  
to Free Grants  
not to affect  
powers of the  
Commissioner  
of Crown  
Lands to grant  
timber licenses  
on lots located  
in Free Grant  
territory.

31 V. c. 8.

C. S. C. c. 23.

Rev. Stat. c. 26.

**11.** Nothing contained in this Act or in "*The Free Grants and Homestead Act of 1868*" or in the Act passed in the thirty-seventh year of Her Majesty's reign, and chaptered twenty-three, or in any other Act passed by the Legislature of this Province, or within its legislative authority, shall be held to have in any way restricted or to restrict the authority of the Commissioner of Crown Lands to grant licenses to cut timber on lots located or sold under "*The Free Grants and Homestead Act of 1868*," or under this Act, and on the contrary it is hereby declared that the said Commissioner, ever since the passing of "*The Free Grants and Homestead Act of 1868*," had under chapter twenty-three of the Consolidated Statutes of Canada, entitled "*An Act respecting the Sale and Management of Timber on Public Lands*," and now has under chapter twenty-six of "*The Revised Statutes of Ontario*," full authority to grant licenses to cut timber on lots located or sold under "*The Free Grants and Homestead Act of 1868*," or under this Act. 40 V. c. 15, s. 1.

Licenses here-  
tofore granted  
confirmed.

**12.** Every such license heretofore issued whether the same has expired or is still current, and every such license which may be hereafter issued to cut timber within the limits of any territory appropriated as Free Grant Territory, shall be deemed to have been and to be good and valid in all respects whatsoever, for the period for which the same was or may be granted notwithstanding the patent for lands included therein may in the meantime have been issued; and every such license shall be taken to have conferred, and to confer upon the holder thereof, the right to cut timber on the lands included therein until its expiration, whether such lands were or are located or sold under the said Act, or were or are unlocated or unsold, subject however to such conditions, regulations and restrictions specially applicable to the said Free Grant Territory, or to the said lots so sold or located as may have been heretofore or may be hereafter made by the Lieutenant-Governor in Council in respect of the payment of timber dues or otherwise, and subject also to the exceptions or restrictions contained in any such license; but no license shall confer the right to cut any other than pine timber upon lands which have been located or sold in the said territory prior to the date of such license unless the location or sale has been heretofore or is hereafter cancelled. 40 V. c. 15, s. 2.

Act not to  
apply to cases  
adjudicated  
before 2nd  
March, 1877,  
or pending on  
28th Dec.,  
1876.

**13.** The two next preceding sections shall not apply to any case adjudicated upon by any Court of this Province, on the second day of March, one thousand eight hundred and seventy-seven, or to any case that was pending on the twenty-eighth day of December, one thousand eight hundred and seventy-six. 40 V. c. 15, s. 3.

Land not to  
be alienated,

**14.** Neither the locatee, nor any one claiming under him, shall have power to alienate (otherwise than by devise)

or to mortgage or pledge any land located as aforesaid, or any right or interest therein before the issue of the patent. 31 V. c. 8, s. 12. &c., before issue of patent.

15. No alienation (otherwise than by devise), and no mortgage or pledge of such land, or of any right or interest therein by the locatee after the issue of the patent, and within twenty years from the date of such location, and during the life-time of the wife of the locatee, shall be valid or of any effect, unless the same be by deed in which the wife of the locatee is one of the grantors with her husband, nor unless such deed is duly executed by her. 31 V. c. 8, s. 13. After issue of patent, alienation, &c., when to be by deed of locatee and wife jointly.

16. Every patent to be issued for any land located as aforesaid shall state in the body thereof the name of the original locatee of the land, and the date of the said location, and that the said patent is issued under the authority of this Act. 31 V. c. 8, s. 16. Patents to state date of location, &c.

17. On the death of the locatee, whether before or after the issue of the patent for any land so located, all his then right and interest in and to such land shall descend to and become vested in his widow during her widowhood in lieu of dower, in case there be such widow surviving such locatee; but such widow may elect to have her dower in such land in lieu of the provision aforesaid. 31 V. c. 8, s. 11. On death of locatee widow to have estate during her widowhood. Widow may elect to have her dower.

18. No land located as aforesaid, nor any interest therein, shall in any event be or become liable to the satisfaction of any debt or liability contracted or incurred by the locatee, his widow, heirs or devisees, before the issuing of the patent for such land. Exemption from liability for debt before issue of patent.

2. After the issuing of the patent for any such land, and while such land or any part thereof, or any interest therein, is owned by the locatee or his widow, heirs or devisees, such land, part or interest, shall during the twenty years next after the date of such location be exempt from attachment, levy under execution, or sale for payment of debts, and shall not be or become liable to the satisfaction of any debt or liability contracted or incurred before or during that period, save and except any debt secured by a valid mortgage or pledge of such land made subsequently to the issuing of the patent. 31 V. c. 8, s. 14. Exemption after issue of patent.

19. Nothing in this Act shall be construed to exempt any land from levy or sale for rates or taxes heretofore or hereafter legally imposed. 31 V. c. 8, s. 15. Exemption not to extend to taxes.

#### SETTLERS' HOMESTEAD FUND.

20. Every parcel of land subject to the provisions of the Act, chapter five of the Acts passed in the thirty-fourth year Lands cleared fenced, &c.,



out of the former Settlers' Homestead Fund under 34 V. c. 5.

31 V. c. 8.

of Her Majesty's Reign, entitled "*An Act to encourage Settlement in the Free Grant Territory*," and the Act amending the same passed in the thirty-seventh year of Her Majesty's reign and chaptered twenty-one, shall continue to be subject thereto, and to this Act, and to any regulations made or to be made by Order in Council under "*The Free Grants and Homestead Act of 1868*" or under this Act, except so far as such regulations and provisions are varied by or are inconsistent with the said first-mentioned Act and the amendments thereto. See 34 V. c. 5, ss. 1 & 4.

2. So much of the eighth section of this Act as relates to building a house shall not apply to any such parcel after clearance, fencing and erection thereon under the said first-mentioned Act and the amendments thereto. 34 V. c. 5, s. 4.

Expense of clearance, &c., to be paid by locatee.

3. No patent shall issue for any such parcel unless the locatee thereof, or those claiming under him, has, within five years from the date of location, paid to the Commissioner of Public Works the expense of such clearance, fencing and erection, and the interest thereon from the date of location. 34 V. c. 5, s. 4.

Forfeiture on failure to pay such expense, or to perform settlement duties.

4. On failure in payment of such expense and interest, or in performance of settlement duties according to this Act, the location shall be forfeited, and all rights of the locatee, and of every person claiming under him, in the land, shall cease. 34 V. c. 5, s. 5.

#### REMISSION OF SUMS DUE IN CERTAIN TOWNSHIPS.

Lieutenant-Governor may remit sums due by settlers in Free Grant Townships.

21. The Lieutenant-Governor in Council may remit the sums due to the Crown in respect of their lands by *bona fide* settlers in all the Free Grant Townships who were in occupation of their lands on the second day of March, 1872, and place such settlers in the same position as those who settled in the Free Grant Townships under the Free Grant Regulations. 35 V. c. 21, s. 1; 37 V. c. 22, s. 1.

May confer powers on Commissioner of Crown Lands to make remissions.

22. The Lieutenant-Governor in Council may confer upon the Commissioner of Crown Lands authority to make the remissions in the next preceding section mentioned, subject to the provisions thereof and of any Order in Council not inconsistent therewith. 35 V. c. 21, s. 2; 37 V. c. 22, s. 2.

## CHAPTER 25.

## An Act respecting the Heir, Devisee and Assignee Commission.

Interpretation, s. 1.  
 Heir, Devisee and Assignee Commission, ss. 2, 3.  
 Jurisdiction, ss. 4-6.  
 Clerk, s. 7.  
 Sittings, ss. 8, 9.  
 Procedure on claims, ss. 10-27.  
 Fees, s. 28.

MISCELLANEOUS, ss. 29-34.  
 Affidavits, ss. 29, 30.  
 Certified copies of proceedings to be evidence, ss. 31, 32.  
 Right to obtain a patent may be assigned, s. 33.  
 Rules and forms, s. 34.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## INTERPRETATION.

1. Wherever the following words occur in this Act, they shall be construed as hereinafter mentioned, unless it is otherwise specially provided, or there is something in the subject or context repugnant to or inconsistent with such construction:—

Interpretation of words.

(1.) "Heir," "Devisee," or "Assignee" shall be understood to include the heirs, devisees, or assignees of any heir, devisee, or assignee, to any degree; and

"Heir, Devisee, Assignee."

(2.) "Lands," shall be understood to mean any lot or lots, piece or parcel of land, of what extent soever, to which a claim may be made under this Act. C. S. U. C. c. 80, s. 31.

## HEIR, DEVISEE AND ASSIGNEE COMMISSION.

2. The present Heir, Devisee and Assignee Commission and the Commissioners appointed thereby shall continue subject to the provisions of this Act, and the Lieutenant-Governor may, from time to time, issue Commissions under the Great Seal, to the Chief Justice and Justices of the Court of Appeal, the Chancellor of Ontario, and the Vice-Chancellors, the Chief Justices and Puisne Justices of the Courts of Queen's Bench and Common Pleas, and to such and so many other persons as he may think fit; and the said Commissioners shall be styled and known as "The Heir Devisee and Assignee Commissioners." C. S. U. C. c. 80, ss. 1 & 31.

Commissioners for the purpose of this Act.

3. The Chief Justice of Appeal and the other members of the Court of Appeal, being also Commissioners under the

Remuneration to Chief Justice and mem-

bers of the  
Court of  
Appeal.

Heir, Devisee and Assignee Commission for the time being, shall be paid for every year out of the Consolidated Revenue Fund of this Province, the sum of one thousand dollars each, to be paid quarterly on the last days of each of the months of March, June, September and December in each year, free and clear from all taxes and deductions whatever, and so in proportion for any broken period. 33 V. c. 5, s. 2.

#### JURISDICTION.

Power of Com-  
missioners.

4. The Commissioners, or any three of them constituting a *quorum* as aforesaid, may ascertain, determine and declare, in all cases brought before them under this Act, who is the party to whom the patent ought to issue for the lands to which such claims respectively relate. C. S. U. C. c. 80, s. 7.

Quorum.

5. Any three of the Commissioners, (the Chief Justice or one of the Justices of the Court of Appeal, the Chancellor of Ontario, one of the Chief Justices or Puisne Justices of the Courts of Queen's Bench or Common Pleas, or one of the Vice-Chancellors, being one,) shall be a *quorum*, and whenever the Commissioners are empowered or directed to do or perform any act, such act may be done or performed by a *quorum* of the Commissioners. C. S. U. C. c. 80, s. 2; 39 V. c. 7, s. 2, *Sched. B.*

Acts of single  
Commissioner  
how per-  
formed.

6. Any act herein authorized or directed to be performed by one Commissioner may be so performed either in or out of the period appointed for the sittings of the Commissioners. C. S. U. C. c. 80, s. 3.

#### CLERK.

Clerk to be  
appointed.

7. The Commissioners may appoint a fit person to be their Clerk. C. S. U. C. c. 80, s. 6.

#### SITTINGS.

Sittings when  
and where to  
be holden.

8. The sittings of the Commissioners shall be holden at the City of Toronto, on the first Monday in January and the first Monday in July in each year, and on the thirteen days next following the said days respectively, Sundays and holidays excepted. C. S. U. C. c. 80, s. 4.

Adjournment  
in case of want  
of business.

9. When the Commissioners have good reason to believe that there will not be sufficient business to require their daily attendance throughout the term appointed for their sittings, they may adjourn for any time within such term that may be consistent with the despatch of the business brought before them. C. S. U. C. c. 80, s. 5.

## PROCEDURE ON CLAIMS.

**10.** Every person claiming any lands within Ontario for which no patent has issued, as being the heir, devisee or assignee, of the original nominee of the Crown, or as having derived a title or claim to such lands from or through any such heir, devisee or assignee, may bring his claim before the Commissioners at their sittings, either personally or by his agent or attorney, and produce before the Commissioners all such documents, proofs and evidence as he may have to adduce in support of such claim; and such evidence may be given *viva voce* before the Commissioners, or by written affidavits or affirmations, sworn or affirmed before any one of the Commissioners, or before any person specially appointed to receive the same by the Commissioners, or before the Judge of any County Court, or any Clerk of the Peace, or any Commissioner for taking affidavits in the Courts of Queen's Bench or Common Pleas in Ontario, each of whom may receive and administer the same. C. S. U. C. c. 80, s. 8.

What claims may be brought before the Commissioners.

And what evidence.

What documents may be received in evidence.

**11.** All certificates of the Commissioner of Crown Lands or of the Clerk of the Executive Council, or copies, certified by them respectively, of documents in their custody, shall be received in evidence before the said Commissioners. C. S. U. C. c. 80, s. 9.

Certified copies of certain documents.

**12.** The Commissioners may summon before them, by summons under the hand of any one of them, either the claimant or any party interested in the case, or any other person whom they deem it expedient to examine as a witness, or whom they have reason to believe to be in possession of any document by the production of which the ends of justice may be better attained; and may require such claimant or party, or such witness, to submit to such oral examination upon oath, or to answer on oath and to sign his answers to interrogatories or cross-interrogatories in writing, or to produce such books, papers or documents in his possession, as to the said Commissioners appears requisite. C. S. U. C. c. 80, s. 10.

Power to command the attendance of witnesses, parties, &c., for examination.

Mode of examination, production of documents, &c.

**13.** The Commissioners may cause such interrogatories or cross-interrogatories as they deem requisite to be served upon and answered by any such claimant, party or witness, or any witness whose depositions may be produced in evidence before them, and may cause commissions to be issued for the examination of any witness not resident in Ontario, and for requiring such witness to produce such books, papers or other documents as he may have in his possession, and may at their discretion delay the proceedings in the case until such evidence and answers have been adduced and given. C. S. U. C. c. 80, s. 11.

Commissions may be issued to examine witnesses not in Ontario.

**14.** If any claimant, party or person duly summoned to give evidence, or to produce any book, paper or document, or to

Penalty on any party or



witness neglecting to appear or to answer.

Interrogatories not answered by a party to be taken *pro confesso*.

answer any interrogatories or cross-interrogatories before the Commissioners, or before any person commissioned by them to receive the same within this Province, wilfully neglects to appear at the time and place appointed in the summons, or appearing, refuses to answer any lawful question, or to produce any document in his possession, he shall forfeit the sum of one hundred dollars to the party at whose instance he has been so summoned or required to answer or to produce such document; and if the claimant or any party interested in the case makes default in answering any interrogatory or cross-interrogatory which he may be duly required to answer, such interrogatory or cross-interrogatory shall be taken *pro confesso* as if his answer had been such as would be most adverse to his own claims or interest. C. S. U. C. c. 80, s. 12.

Affidavit to be made by any claimant before his claim shall be received.

**15.** The Commissioners shall not receive or proceed upon any claim until the party by whom, or on whose behalf the same is made (or if such party consist of more than one person, then until some one of such persons), has made and produces before the Commissioners an affidavit or affirmation in writing signed by him, that such claim is just and well founded to the best of his knowledge and belief, and that he is not aware of any adverse claim, or if he is aware of any adverse claim, that he has at least one month before the making of such affidavit or affirmation caused to be served on the party having or supposed to have such adverse claim, notice in writing of his claim and of his intention to bring the same before the Commissioners, and of the time when it is intended to be so brought, and a copy of such notice shall be annexed to the affidavit or affirmation. C. S. U. C. c. 80, s. 13.

Certain public notice to be given before a claim is made and received.

**16.** The Commissioners shall not proceed upon any such claim as aforesaid, unless a notice specifying such claim and the name or names of the party claiming, together with the number of the lot of which the lands claimed consist or form part, and of the concession and the name of the Township in which the same lies, has been put up in some conspicuous place in the office of the Clerk of the Peace of the County in which the lands are situate, during at least thirty days before the claim comes to be heard before the said Commissioners, nor unless a certificate to that effect from such Clerk of the Peace is produced to the Commissioners. C. S. U. C. c. 80, s. 14.

Duty of the Clerk of the Peace with regard to such notices.

**17.** The Clerk of the Peace of each County shall, once in every three months, make a list of the claims so put up, in his office, specifying therein the particulars of such claims in the manner in which they are hereinbefore required to be specified in the notice to be put up, and shall affix such list in some conspicuous part of the Court House, or place in which the Courts of General Sessions are held for the County, and shall cause the said list to be publicly read and proclaimed at each such Session by the Crier in open Court, immediately after the de-

livery of the charge to the Grand Jury ; and for each such certificate the Clerk of the Peace may demand and receive the sum of fifty cents, and no more. C. S. U. C. c. 80, s. 15.

**18.** The Commissioners may defer, delay, or adjourn the proceedings on any claim brought before them, and may give such further or enlarged time for the production of evidence, or for any other purpose relative to such claim, and for the decision thereon, as they may deem expedient for the attainment of the ends of justice. C. S. U. C. c. 80, s. 16.

Delay may be granted by the Commissioners.

**19.** After the Commissioners have fully examined any such claim, they may either reject or allow the same, as in their judgment the justice and equity of the case requires, without regard to legal forms or to the strict letter of the law or legal rules of evidence, and shall report their decision to the Lieutenant-Governor in Council, and such report shall be final and conclusive, (except in the case hereinafter mentioned,) and the Lieutenant-Governor in Council shall direct Her Majesty's letters patent under the Great Seal of the Province to issue, for granting the lands in question to the party who has been determined by the decision of the Commissioners to be entitled to the same as representing the original nominee of the Crown. C. S. U. C. c. 80, s. 17.

Commissioners to decide on the claim and report to the Lieutenant-Governor in Council.

Patent to issue on such report.

**20.** Such letters patent shall have the same and no other effect or operation with regard to any charge, incumbrance, lien, matter or thing, upon or affecting the lands so granted, as letters patent issuing for the same in favour of the original nominee of the Crown would have had, save only as establishing the claim of the party in whose favour they may be granted, to the lands to which they relate, as the heir, devisee or assignee of or as otherwise representing the original nominee. C. S. U. C. c. 80, s. 18.

The effect of the patent with regard to charges, or incumbrances on the lands.

**21.** Neither the decision of the Commissioners on any claim, nor the issuing of the letters patent on such decision, shall extend to or in any way affect any claim of the said party, or of any other party, to any lands other than those to which such decision expressly relates, and which are mentioned and described in the report and letters patent, but such claim to other lands shall continue and remain as if such decision and report had not been made. C. S. U. C. c. 80, s. 19.

Report and patent not to affect any claim to any lands but those mentioned therein.

**22.** No letters patent shall issue on any decision and report of the Commissioners until after the expiration of one month from the time such report has been transmitted to and marked as received by the Clerk of the Executive Council. C. S. U. C. c. 80, s. 20.

Patent not to issue for one month after the report is received.

**23.** If, before the expiration of such month, a *quorum* of the said Commissioners, from any representation made to them,

Patent may be stayed if the report has

been obtained by surprise, &c.

Commissioners may rehear the case.

find reason to believe that such decision and report were obtained by surprise or erroneously made in any respect, and that justice requires that the issuing of the letters patent should be stayed, then such *quorum* of the said Commissioners, although not then the regular period of their sitting, may report accordingly to the Lieutenant-Governor in Council, and the issuing of the letters patent shall be thereupon stayed until the Commissioners again report upon the case, and the Commissioners may rehear the case or let in any new claim and receive or insist upon any new evidence as to them may appear expedient to enable them to do justice in the case, and may thereafter decide and report thereon as if no prior decision and report had been made, and with like effect. C. S. U. C. c. 80, s. 21.

The costs occasioned by such rehearing to be in the discretion of the Commissioners.

**24.** If, under the circumstances of any such case, it appears to the Commissioners fair and right so to do, they may allow to the party in whose favour the first decision and report were made, such costs against the party at whose instance the case has been again taken into consideration as they may deem just and reasonable; or they may, in case of fraud or wilful wrong in the conduct of such party, award costs in like manner against him to the party in whose favour the subsequent decision and report are made. C. S. U. C. c. 80, s. 22.

Purchasers of unpatented lands sold for taxes may claim patent before the Commissioners.

**25.** In case any land for which no patent has issued is at any time described as granted in any Schedule furnished by the Commissioner of Crown Lands to the Treasurer of any County in Ontario, under the provisions of any law concerning the collection of local taxes or assessments, and is afterwards sold for arrears of such local taxes or assessments, and in case the period allowed by law for the redemption of such lands has expired, the purchaser, or the heir, devisee or assignee of the purchaser may claim the same before the Commissioners aforesaid, and such purchaser shall thereupon, for all the purposes of this Act, be considered as an assignee of the original nominee of the Crown, and his claim shall be acted on and dealt with accordingly. C. S. U. C. c. 80, s. 23. *See Rev. Stat. c. 180, s. 106.*

Effect of mortgages, &c., granted before the issue of the letters patent.

**26.** In case the original nominee of the Crown, or any person through whom any party obtaining letters patent for any lands under this Act derived his claim, had before the allowance of such claim, and before the issue of such letters patent, granted any mortgage, incumbrance or lien on such lands, by any instrument by which the same would have been validly granted if the letters patent had issued in favour of the grantor before the date of such instrument, the same may be registered in the office of the Registrar for the County in which the lands lie, subject to the same conditions, and with the same effect and no other, and shall in law and equity have the same force and effect, and no other, as if letters patent for the said land had, before the execution of such instrument, been issued in favour of such grantor. C. S. U. C. c. 80, s. 24.

**27.** In all cases under this Act in which any witness duly appears to give evidence before the Commissioners, or before any person appointed by them to examine or to receive the testimony or deposition of such witness, the Commissioners may order and direct the party at whose instance such witness has been summoned, or his testimony or depositions have been taken, to allow to such witness for his loss of time and expenses such sum as the Commissioners may deem equitable, which order the party shall obey, or in default, the sum shall be recoverable from him by action in any Court having jurisdiction in civil cases to a like amount, due regard being had to the limits of the local jurisdiction of such Court. C. S. U. C. c. 80, s. 27

Costs may be allowed to witness.

Recovery of such costs.

#### FEEs.

**28.** The following fees in respect of proceedings had under this Act shall be payable to the Crown in stamps, subject to the provisions of *The Act respecting Law Stamps* :

Fees.

Rev. Stat., c. 21.

1. For filing each petition, twenty cents ;
2. On every claim entered and received, fifty cents ;
3. For setting down any claim for hearing, fifty cents ;
4. On the hearing of any claim, one dollar ;
5. On every claim allowed, fifty cents ;
6. For making up a report on the same, two dollars ;
7. For each certificate of the allowance of any claim, twenty-five cents ;
8. For a copy of the order respecting any claim, twenty-five cents ;
9. For each summons for the attendance of any witness or witnesses, forty cents ;
10. For each commission for the examination of witnesses, two dollars ;
11. For any certified copy of any paper or document in the custody of the Clerk of the Commissioners, twenty-five cents for the certificate, and at the rate of ten cents for each one hundred words in such copy ;
12. And such reasonable fees for any service not herein specially mentioned or included therein, as the said Commissioners may from time to time direct. C. S. U. C. c. 80, s. 28 ; C. S. U. C. c. 33, s. 6 *Sched.* ; 37 V. c. 7, s. 92.

Unenumerated services.



## MISCELLANEOUS.

Fees to persons appointed to take affidavits.

**29.** Every person, authorized by the tenth section to take affidavits in proceedings under this Act, (not being one of the Commissioners,) shall for every affidavit or affirmation so taken before him be entitled to demand and recover from the party requiring him to take the same the sum of twenty-five cents, and no more. C. S. U. C. c. 80, s. 28.

Recovery of such fees.

**30.** All such fees may be required to be paid before the service for which they are granted is performed, or if not so required, may be recovered in the manner hereinbefore appointed with regard to the sum allowed to a witness. C. S. U. C. c. 80, s. 28.

Certified copies of proceedings and orders of the Commissioners to be received in evidence.

**31.** The copy of any order, report or decision made by the Commissioners under this Act, certified by their Clerk and countersigned by one of the Commissioners, shall be received in any civil suit or action in any Court in this Province, as evidence of the making of such order, report or decision, in the manner and form and according to the tenor thereof as set forth in such copy. C. S. U. C. c. 80, s. 29.

In what cases only it shall be necessary to prove the certificate.

**32.** It shall not be necessary in such suit or action to prove the signatures of such Clerk or Commissioner, if the party intending to produce the same has given due notice of such intention to an adverse party according to the course and practice of the Court, unless such adverse party has afterwards in like manner signified his intention to dispute such signatures, or either of them, in which case it shall be requisite to prove the same, and the costs attending such proof may, in the discretion of the Court, be allowed to the party making such proof, whatever be the result of the suit or action. C. S. U. C. c. 80, s. 30.

Costs.

Right to obtain a patent, assignable in certain cases.

**33.** Any person whose right to obtain a patent for lands has been established by the Commissioners under this or any former Heir, Devisee and Assignee Act, may, by an instrument in writing, assign, transfer and convey his right and interest to or in such land; and such assignment, as well as all subsequent assignments, may be registered agreeably to the provisions of "*The Public Lands Act*;" and the last assignee shall be entitled to a patent upon proving compliance with all the conditions to which the original location was subject. C. S. U. C. c. 80, s. 32.

Assignment may be registered under Rev. Stat. c. 23, s. 17.

Rules and forms of proceedings to be established by the Commissioners.

**34.** The Commissioners for the time being may from time to time make and establish such rules and forms, with regard to any proceedings to be had before them, and to such notices, papers and other documents as may be required in the conduct of such proceedings, as to them appear expedient for the better attainment of the purposes of justice. C. S. U. C. c. 80, s. 26.

## CHAPTER 26.

## An Act respecting the Sale and Management of Timber on Public Lands.

---

Licenses to cut timber on public lands, ss. 1-3.	Obligations of licensees, ss. 9-12.
Rights of licensee, ss. 2, 4.	Liability of persons cutting timber without a license, ss. 13-15.
By-laws of Townships in relation to timber on road allowances not to prevail against license, s. 5.	Seizure of forfeited timber by the Crown, ss. 16-20.
Townships entitled to percentage of timber dues, ss. 6-8.	Existing licenses and liens of the Crown, s. 21.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

## LICENSES TO CUT TIMBER ON PUBLIC LANDS.

1. The Commissioner of Crown Lands, or any officer or agent under him authorized to that effect, may grant licenses to cut timber on the ungranted lands of the Crown, at such rates, and subject to such conditions, regulations and restrictions as may from time to time be established by the Lieutenant-Governor in Council, and of which notice may be given in the *Ontario Gazette*.

2. No license shall be so granted for a longer period than twelve months from the date thereof; and if, in consequence of any incorrectness of survey, or other error, or cause whatsoever, a license is found to comprise lands included in a license of a prior date, the license last granted shall be void in so far as it interferes with the one previously issued, and the holder or proprietor of the license so rendered void shall have no claim upon the Government for indemnity or compensation by reason of such avoidance. C. S. C. c. 23, s. 1.

2. The said licenses shall describe the lands upon which the timber may be cut, and shall confer for the time being on the nominee the right to take and keep exclusive possession of the lands so described, subject to such regulations and restrictions as may be established:—And such licenses shall vest in the holders thereof all rights of property whatsoever in all trees, timber and lumber cut within the limits of the license during the term thereof, whether such trees, timber and lumber are cut by authority of the holder of such license, or by any other per

son, with or without his consent ;—And such licenses shall entitle the holders thereof to seize in revendication, or otherwise, such trees, timber or lumber where the same are found in the possession of any unauthorized person, and also to institute any action or suit at Law or Equity against any wrongful possessor or trespassers, and to prosecute all trespassers and other offenders to punishment, and to recover damages if any :—And all proceedings pending at the expiration of any such license may be continued to final termination as if the license had not expired. C. S. C. c. 23, s. 2.

Proceedings  
pending when  
license expires.

Government  
road allow-  
ances to be  
deemed as un-  
granted lands.

**3.** Every Government road allowance included in any Crown timber license, heretofore granted, or which may hereafter be granted under section one of this Act, shall be deemed and taken to be and to have been ungranted lands of the Crown, within the meaning of said section, and liable as such to be included in such license. 34 V. c. 19, s. 1.

Rights of  
licensee.

**4.** The licensee or nominee named in any such license shall be deemed and taken to have, and to have had, all the rights in respect of every such road allowance, and the trees, timber and lumber thereon, or cut thereon, as were or, by the second section of this Act, may be conferred upon him in respect of any other Crown lands embraced in such license, and the trees, timber and lumber thereon, or cut thereon, except that he shall not be entitled to take or keep exclusive possession of any such road allowance. 34 V. c. 19, s. 2.

By-laws not to  
prevail against  
license.

**5.** No by-law passed, or to be passed by any Municipal Council for preserving, selling, or otherwise appropriating or disposing of the timber or trees, or any part thereof, on any Government road allowance or allowances included in any such license, shall be deemed or taken to have had or have any force or effect against any such license. 34 V. c. 19, s. 3.

Township  
Councils en-  
titled to per-  
centage of  
timber dues.

**6.** In case the Council of any Township, organized as a separate Municipality, or the Council of any united Townships, have passed, or hereafter pass, any by-law for preserving or selling the timber or trees on the Government road allowances within such Township, or within the senior Township of said united Townships, and included in any such license, the Corporation of such Township or united Townships shall be entitled to be paid out of the Consolidated Revenue Fund of this Province a sum equal to two per centum of the dues received by Her Majesty for or in respect of the timber and saw logs which, during the existence of such by-law, were cut within the said Township, or within such senior Township, under the authority of such license ; but no Corporation shall be entitled to such percentage of the dues received for timber or saw logs cut during the times or seasons when any timber, or trees on any such road allowances were cut or removed, for which cutting or removal such Corporation had, before the

Proviso.

fifteenth day of February, one thousand eight hundred and seventy-one, obtained a verdict against any such licensee or nominee. 34 V. c. 19, s. 4.

7. No Municipal Corporation shall be entitled to such payment as aforesaid, unless a certified copy of the by-law passed or to be passed as aforesaid, accompanied by an affidavit of the Clerk or Reeve of such Corporation, verifying such copy, and the date of the passing of such by-law, is filed in the Department of Crown Lands at Toronto within six months from the passing of such by-law; and the said affidavit may be made or taken before any person or officer who, under the forty-second or forty-third sections of "*The Public Lands Act*," is authorized to take the affidavits in those sections mentioned. 34 V. c. 19, s. 5.

Terms where-  
on Councils  
may obtain the  
percentage.

Rev. Stat. c.  
23, ss. 42, 43.

8. All moneys to be paid as aforesaid, to any Municipal Corporation shall be expended in the improvement of the highways situate within the Township or senior Township in respect of which such moneys were paid. 34 V. c. 19, s. 6.

Councils to ex-  
pend percent-  
age on high-  
ways.

[See *Rev. Stat. c. 24, ss. 11-13, as to the right of the Crown to grant timber licenses on Free Grant Lands.*]

#### OBLIGATIONS OF PERSONS OBTAINING LICENSES.

9. Every person obtaining a license shall, at the expiration thereof, make to the officer or agent granting the same, or to the Commissioner of Crown Lands, a return of the number and kinds of trees cut, and of the quantity and description of saw logs, or of the number and description of sticks of square timber manufactured and carried away under such license; and such statement shall be sworn to by the holder of the license, or his agent, or by his foreman, before a Justice of the Peace; And any person refusing or neglecting to furnish such statement, or evading or attempting to evade any regulation made by Order in Council, shall be held to have cut without authority and the timber made shall be dealt with accordingly. C. S. C. c. 23, s. 3.

Return to be  
made by per-  
sons obtaining  
licenses.

To be attested  
on oath.

10. All timber cut under licenses shall be liable for the payment of the Crown dues thereon, so long as and wheresoever the said timber or any part of it may be found in Ontario, whether in the original logs or manufactured into deals, boards or other stuff; and all officers or agents entrusted with the collection of such dues may follow all such timber and seize and detain the same wherever it is found until the dues are paid or secured. C. S. C. c. 23, s. 4.

Timber liable  
to payment of  
dues may be  
followed until  
they are paid.

2. Nothing in this Act contained shall be construed to repeal the provisions of the fourth section of chapter twenty-three of the Consolidated Statutes of Canada, as regards timber removed into the Province of Quebec.

Timber re-  
moved into  
Quebec.



[Section 4 of *Con. Stat. Can. c. 23*, is as follows:—

Timber liable to payment of dues may be followed until they are paid.

4. All timber cut under licenses shall be liable for the payment of the Crown dues thereon, so long as and wheresoever the said timber or any part of it may be found, whether in the original logs or manufactured into deals, boards or other stuff; and all officers or agents entrusted with the collection of such dues may follow all such timber and seize and detain the same wherever it is found until the dues are paid or secured. 12 V. c. 30, s. 4.]

The giving of bonds or notes not to affect the lien on the timber.

11. Bonds or promissory notes taken for the Crown dues either before or after the cutting of the timber, as collateral security, or to facilitate collection, shall not in any way affect the lien of the Crown on the timber, but the lien shall subsist until the said dues are actually discharged. C. S. C. c. 23, s. 5.

Sale of timber seized for non-payment of dues.

12. If any timber so seized and detained for non-payment of Crown dues remains more than two months in the custody of the agent or person appointed to guard the same, without the dues and expenses being paid, the Commissioner of Crown Lands, with the previous special sanction of the Lieutenant-Governor in Council, may order a sale of the said timber to be made after sufficient notice; and the balance of the proceeds of such sale, after retaining the amount of dues and costs incurred, shall be handed over to the owner or claimant of such timber. C. S. C. c. 23, s. 6; 40 V. c. 8, s. 70.

#### LIABILITY OF PERSONS CUTTING WITHOUT A LICENSE.

Penalty on persons cutting timber without license, etc.

13. If any person without authority cuts or employs or induces any other person to cut, or assists in cutting any timber of any kind on any of the Crown, Clergy, School or other Public Lands, or removes or carries away, or employs or induces or assists any other person to remove or carry away, any merchantable timber of any kind so cut from any of the Public Lands aforesaid, he shall not acquire any right to the timber so cut, or any claim to any remuneration for cutting, preparing the same for market, or conveying the same to or towards market.

If the timber has been removed, etc.

Penalty.

2. When the timber or saw logs made has or have been removed by any such person out of the reach of the officers of the Crown Lands Department, or it is otherwise found impossible to seize the same, such person shall in addition to the loss of his labour and disbursements, forfeit a sum of three dollars for each tree (rafting stuff excepted) which he is proved to have cut or caused to be cut or carried away.

By whom penalty recoverable.

3. Such sum shall be recoverable with costs, at the suit and in the name of the Commissioner of Crown Lands, or resident agent, in any Court having jurisdiction in civil matters to the amount of the penalty.

4. In all such cases it shall be incumbent on the party charged to prove his authority to cut; and the averment of the party seizing or prosecuting that he is duly employed, under the authority of this Act, shall be sufficient proof thereof, unless the defendant proves the contrary. C. S. C. c. 23, s. 7.

Party accused must prove the granting of license.

14. Wherever satisfactory information, supported by affidavit made before a Justice of the Peace or before any other competent party, is received by the Commissioner of Crown Lands, or any other officer or agent of the Crown Lands Department, that any timber or quantity of timber has been cut without authority on Crown, Clergy, School or other Public Lands, and describing where the said timber can be found, the said Commissioner, officer or agent, or any one of them, may seize or cause to be seized in Her Majesty's name, the timber so reported to be cut without authority, wherever it is found, and place the same under proper custody, until a decision can be had in the matter from competent authority. C. S. C. c. 23, s. 8.

Timber alleged to be unlawfully cut may be seized on a sufficient affidavit, etc.

15. Where the timber so reported to have been cut without authority on the Public Lands, has been made up with other timber into a crib, dam or raft, or in any other manner has been so mixed up at the mills or elsewhere, as to render it impossible or very difficult to distinguish the timber so cut on Public Lands without license from other timber with which it is mixed up, the whole of the timber so mixed shall be held to have been cut without authority on Public Lands, and shall be liable to seizure and forfeiture accordingly, until satisfactorily separated by the holder. C. S. C. c. 23, s. 8.

As to timber so cut and mixed up with other timber.

#### RESISTING SEIZURE—REMOVING TIMBER SEIZED—CONDEMNATION OF SUCH TIMBER, &c.

16. Any officer or person seizing timber, in the discharge of his duty under this Act, may in the name of the Crown call in any assistance necessary for securing and protecting the timber so seized. C. S. C. c. 23, s. 9.

Seizing officer may command assistance.

[Sections 9 and 10 of *Con. Stat. Can.* c. 23, creating certain criminal liabilities, are as follows :

9. Any officer or person seizing timber in the discharge of his duty under this Act, may in the name of the Crown call in any assistance necessary for securing and protecting the timber so seized ; and if any person, under any pretence, either by assault, force or violence, or by threat of such assault, force or violence, in any way resists or obstructs any officer or person acting in his aid, in the discharge of his duty under this Act, such person, being convicted, shall be adjudged guilty of felony, and shall be punishable accordingly. 12 V. c. 30, s. 9.

Seizing officer may command assistance.

Violent resistance to be felony.

10. If any person, whether pretending to be owner or not, either secretly or openly, and whether with or without force or violence, takes timber under seizure or causes to be taken and carried away, without permission of the officer or person who seized the same, or of some competent authority, he shall be deemed a felon, and shall be punishable accordingly. 12 V. c. 30, s. 10.

Carrying away timber under seizure to be deemed a felony thereof.

authority, any timber seized and detained as subject to forfeiture under this Act, before the same has been declared by competent authority to have been seized without due cause, such person shall be deemed to have stolen such timber being the property of the Crown, and to be guilty of felony and liable to punishment accordingly. 12 V. c. 30, s. 10.]

Burden of proof that dues have been paid, on whom to lie.

**17.** Whenever any timber is seized for non-payment of Crown dues, or for any other cause of forfeiture, or any prosecution is brought for any penalty or forfeiture under this Act, and any question arises whether the said dues have been paid on such timber, or whether the said timber was cut on other than any of the Public Lands aforesaid, the burden of proving payment, or on what land the said timber was cut, shall lie on the owner or claimant of such timber, and not on the officer who seizes the same, or the party bringing such prosecution. C. S. C. c. 23, s. 10 (2).

Timber seized to be condemned, if not claimed within a certain time.

**18.** All timber seized under this Act shall be deemed to be condemned, unless the person from whom it was seized, or the owner thereof, within one month from the day of the seizure, gives notice to the seizing officer or nearest officer or agent of the Crown Lands Office, that he claims or intends to claim the same; failing such notice, the officer or agent seizing shall report the circumstances to the Commissioner of Crown Lands, who may order the sale of the said timber by the said officer or agent, after a notice on the spot of at least thirty days. C. S. C. c. 23, s. 11 (1).

Judge may order timber to be delivered on security being given.

**19.** Any Judge having competent jurisdiction may, whenever he deems it proper, try and determine such seizures, and may order the delivery of the timber to the alleged owner, on receiving security by bond with two good and sufficient sureties to be first approved by the said agent, to pay double the value in case of condemnation.

2. Such bond shall be taken in the name of the Commissioner of Crown Lands, to Her Majesty's use, and shall be delivered up to and kept by the Commissioner.

3. If such seized timber is condemned, the value thereof shall be forthwith paid to the Commissioner of Crown Lands, or said agent, and the bond cancelled, otherwise the penalty of such bond shall be enforced and recovered. C. S. C. c. 23, s. 11 (2).

Forfeiture of timber in case of fraud.

**20.** Every person availing himself of any false statement or oath to evade the payment of Crown dues, shall forfeit the timber on which dues are attempted to be evaded. C. S. C. c. 23, s. 12.

#### LICENSES BEFORE THE 30TH MAY, 1849.

Existing licenses or liens saved.

**21.** Nothing in this Act shall in any way invalidate or affect licenses granted before the thirtieth day of May, 1849, or

any obligation then contracted for payment of Crown dues under such licenses, or invalidate the lien of the Crown on any timber cut upon Public Lands, within the limits of the Province on that day, and upon which the dues theretofore exacted have not been paid, notwithstanding any bond or promissory note taken for the amount of such dues. C. S. C. c. 23, s. 14.

## CHAPTER 27.

### An Act to prevent Trespasses to Public Lands.

Entry on Crown Lands only by special license, s. 1.	Appropriation of money levied under this Act, s. 15.
Commissioners may be appointed to investigate trespasses, s. 2.	Persons charged to be summoned to answer, s. 16.
Proceedings against intruders, ss. 3-9.	Sheriffs, etc., to execute warrants of Commissioners, s. 17.
Punishment of persons cutting trees, quarrying stone, etc., ss. 10-12.	Protection of Commissioners against vexatious actions, s. 18.
Sale of timber and stone cut or quarried, s. 13.	Appeal from Commissioners, s. 19.
Evidence on investigations, s. 14.	Commissioners to be Justices of the Peace <i>ex officio</i> , s. 20.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. No body corporate, and no servant or agent of such body, shall enter into or upon, have, hold, use or enjoy, for any purpose whatever, any land belonging to Her Majesty, without having the license of Her Majesty for such purpose, signified under the hand and seal of the Lieutenant-Governor, or being expressly authorized by statute. C. S. U. C. c. 81, s. 1.

2. The Lieutenant-Governor may, from time to time, appoint two or more Commissioners, under the Great Seal, to inquire into any complaint made to them, or any one of them, against any person for illegally possessing himself of any land in Ontario, surveyed or unsurveyed, for which no grant, lease, ticket either of location or purchase, or letter of license of occupation, has been issued, either under the Great Seal, or by or from the proper Department of the Provincial Government in that behalf, whether such land be Crown or Clergy Reserve or School Land or however otherwise denominated, or whether held in trust, or in the nature of a trust, for any party whomsoever; and also to inquire into any complaint made to them, or any

Entry on Crown Lands not to be made without special license.

Commissioners may be appointed to inquire concerning trespasses committed upon Crown Lands.



one of them, against any person for having unlawfully cut down or removed any timber, trees, stone or soil, on such land, or for having done any other wilful and unlawful injury thereon. C. S. U. C. c. 81, s. 2.

Commissioners on finding illegal possession—

To give notice to intruder to remove within thirty days.

On neglecting to remove, warrant of removal may be directed to and executed by the Sheriff.

3. If the Commissioners, or any one or more of them, upon investigation of the complaint so made, find and determine that the person complained against is unlawfully in possession of such lands, they or any of them may give notice to such person to remove from the occupation thereof within not less than thirty days from service of the notice, and if the person so notified neglects so to remove within the time specified in the notice, the said Commissioners, or any one or more of them, may issue a warrant, signed and sealed by them or him, directed to the Sheriff of the County in which the lands are situated, commanding him to eject and remove the person from the lands, which warrant the said Sheriff shall execute and carry into effect in like manner as a writ of *habere facias possessionem* issued by one of Her Majesty's Superior Courts of Common Law. C. S. U. C. c. 81, s. 3.

Commissioners may, in case of doubt, issue a general notice to quit.

4. If, upon the investigation, it appears to the Commissioners or Commissioner that any person has been actually in possession of such lands or a part thereof, or has, within twelve months next before, claimed to be in possession, or claimed or pretended to have a right to such possession, but it nevertheless appears uncertain who is then in actual possession, or whether the person in possession claims to be in possession of his own right, or merely under or on behalf of another, then the said Commissioners or Commissioner may give a notice to quit similar to that in the last preceding section mentioned, but directed generally to all persons having or claiming possession of the lands, their tenants, bailiffs and servants, and all others whom it may concern; and if all persons whosoever who have not written authority from the Commissioners, or one of them, to remain upon such lands, do not quit and remove from the same within the time specified in such notice, the said Commissioners, or one of them, may issue a warrant of removal, signed and sealed by them or him, directed to the Sheriff of the proper County, commanding him to eject and remove all persons whomsoever from such lands, and the Sheriff shall execute and carry the warrant into effect, as in the preceding section is provided. C. S. U. C. c. 81, s. 4.

Persons disobeying the notice may be removed on an order of the Commissioners directed to the proper Sheriff.

As to the description of the lands in any summons under the said Act.

5. Every summons, notice to quit, and warrant of removal shall describe the lands with the same certainty as would be necessary in a deed of conveyance between parties. C. S. U. C. c. 81, s. 5.

How summons and notice to be served.

6. Neither the summons nor notice to quit need be personally served; it shall be sufficient to deliver the same to the person in actual possession or occupation of the land, and the notice to

quit may also be served by leaving the same with the wife of such person on the premises, or with any grown person found thereon, and by putting up in the last case a duplicate notice in some conspicuous place on the premises; and where no grown person is found on the premises, then by putting up one such notice in each of four conspicuous places on the premises; but no fine shall be imposed on any person except upon personal service of the summons or service on his wife. C. S. U. C. c. 81, s. 6.

7. If, after the execution of any warrant of removal, special for the removal of particular parties, or general for the removal of all parties found trespassing or intruding upon any such lands, the person removed, or any other person, returns or enters into or upon the same lands, or if the Sheriff has reason to believe that such person, or any other person, will so return or enter upon the same lands, unless they be protected by process for the prevention thereof, the Sheriff shall with the warrant certify the same into the Court of Queen's Bench or Common Pleas at Toronto, setting forth such return, entry or intrusion, or his belief that such will take place unless the lands be protected by process for the prevention thereof, and thereupon the Court may issue a writ of removal by continuance, as nearly as may be in the form of Schedule A. to this Act, and, upon a similar return thereto, a second writ, and afterwards, upon similar returns, other writs of a like description, as often as may be necessary for the protection of the lands against intrusion. C. S. U. C. c. 81, s. 7.

If the party removed returns or is expected by the Sheriff to return, a writ of removal by continuance may be obtained from one of the Superior Courts.

8. Any person concerned in the proceedings, or showing an interest entitling him to be heard in that behalf, may obtain, from the Court of Queen's Bench or Common Pleas, a rule to show cause, which shall be served personally on one or more of the Commissioners, and thereupon such Court may order a *supersedeas* to any such writ, after which no further proceedings shall be had upon such writ of removal as aforesaid, or the proceedings of the Commissioners whereon it was founded; but if it be deemed necessary to proceed against such party, or any other, for intrusion or trespass upon the lands, the like proceedings of notice to quit and warrant of removal may be had as at first. C. S. U. C. c. 81, s. 8.

Writ of removal by continuance may be superseded upon cause shown.

9. If any person who has been so removed returns and unlawfully resumes occupation of the same lands, or any part thereof, the Commissioners, or any one of them, may, upon complaint and satisfactory proof of such fact, order him to be committed to the Common Gaol of the County for a term not exceeding thirty days, and that he shall pay a fine to Her Majesty, not exceeding eighty dollars. C. S. U. C. c. 81, s. 9.

Proceedings, if the party again intrudes.

10. If upon investigation of any complaint made against a person for having unlawfully cut down or removed any timber

Penalty for resuming possession after having been removed by virtue of this Act.

Penalty not exceeding \$80 for unlawfully

cutting and removing trees, quarrying, &c.

Imprisonment for default of payment.

Convictions before the Commissioners may be removed as of course by *certiorari* :

Rev. Stat. c. 58.

Proceedings for the satisfaction of any fine imposed by such conviction,

or trees, or quarried or removed any stone, or other materials, from any of the lands aforesaid, the Commissioners, or any one or more of them, find him guilty thereof, the Commissioners or any one or more of them may order him to pay a fine to Her Majesty not exceeding eighty dollars, and in default thereof to be committed to the gaol of the proper County for a period not exceeding three months. C. S. U. C. c. 81, s. 10.

**11.** In all cases of summary conviction under this Act, the same may as of course be removed by *certiorari* into the Court of Queen's Bench or Common Pleas, and thereupon, unless otherwise provided by *The Act respecting the Practice in suits and proceedings instituted on behalf of the Crown*, such Court shall, for enforcing the fine, issue, as in the case of other Crown debts, one or more writs of *fiery facias* and *capias ad satisfaciendum*, in the nature of the exchequer long writ, as nearly as may be in the form of Schedule B. to this Act, and from time to time repeat such writs as may be necessary, till the amount has been paid. C. S. U. C., c. 81, s. 11.

If the party convicted is imprisoned for non-payment of such fine when the writ of execution issues,

**12.** If at the time of the removal of such conviction, the person convicted is in custody under the warrant of the Commissioners, or any one of them, for non-payment of the fine, he shall not be discharged from imprisonment at the end of the time prescribed in such warrant, if the Sheriff then has a writ of *fiery facias* and *capias ad satisfaciendum* for the levying of such fine, and is unable to make the same out of the goods and chattels or lands and tenements of the party, but such party shall remain charged in custody upon such writ until the fine is fully paid, as in the case of other Crown debtors similarly charged. C. S. U. C. c. 81, s. 11.

Timber, &c., cut, but not removed, may be seized and sold.

**13.** The Commissioners or any one of them may order and cause to be seized and detained any timber or trees unlawfully cut down and any stone quarried upon the lands aforesaid, and not removed therefrom, and may afterwards sell and dispose thereof, as instructed from time to time by the Lieutenant-Governor in that behalf. C. S. U. C. c. 81, s. 12.

Commissioners authorized to summon witnesses and examine upon oath.

**14.** The Commissioners or any one of them may summon before them any person as a witness to give evidence on any matter they are authorized to investigate, and may administer to him an oath that he will true answer make to all questions put to him in reference to the matter under investigation. C. S. U. C. c. 81, s. 13.

Appropriation of moneys levied under this Act.

**15.** All moneys and fines collected under this Act shall, after deducting the expenses of collecting, be paid into the hands of the Provincial Treasurer, and form part of the Consolidated Revenue of this Province. C. S. U. C. c. 81, s. 14.

**16.** The Commissioner or Commissioners, before entering on the investigation of any charge under this Act, shall summon the party charged to appear before him or them at a place named in the summons, and if such party does not appear, the Commissioner or Commissioners may, upon proof of due service of the summons, proceed to hear and determine the complaint *ex parte*. C. S. U. C. c. 81, s. 15.

Persons accus-  
ed to be sum-  
moned pre-  
vious to inves-  
tigation of  
charge.

**17.** The Commissioner or Commissioners acting under this Act, may issue any warrant or warrants under their hands and seals, to any Sheriff, gaoler or peace officer of the County wherein the proceeding is had, commanding such Sheriff, gaoler or peace officer to carry into effect any order by them made within their jurisdiction; and such warrants shall be executed by the Sheriff, gaoler or peace officer, as warrants issued by Justices of the Peace are. C. S. U. C. c. 81, s. 16.

Commission-  
ers empowered  
to issue, and  
Sheriffs and  
other officers  
bound to exe-  
cute their  
warrants.

**18.** The Commissioners and all acting under their authority shall respectively have the same privilege and protection in respect of any action or suit brought against them for any act by them done in the execution of their office, that Justices of the Peace, Sheriffs, gaolers or peace officers respectively have, and the Commissioners, when engaged in the execution of their office, and each of them when so engaged, shall have the same power to commit for contempt that Justices of the Peace have in similar cases for contempts against them in the execution of their office. C. S. U. C. c. 81, s. 17.

Commission-  
ers entitled to  
the same pro-  
tection as Jus-  
tices of the  
Peace, &c.

**19.** Any person dissatisfied with the judgment or decision of the Commissioners in any of the foregoing cases, may, within three months from the date thereof, appeal to the Court of Chancery, having first given to the Commissioners fourteen days' notice in writing of the intention to appeal, in which case such Commissioners shall thereupon transmit to the proper officer of the Court a copy of their judgment and the evidence, and the Court may revise, alter, affirm or annul such decision, or order further inquiry, or direct an issue to be tried at law, or before the said Court of Chancery or a Judge thereof with the assistance of a jury, and may make such order respecting costs and other matters as seems reasonable and just; and the decree of the Court on the appeal shall be conclusive on the party appealing and on the Commissioners. C. S. U. C. c. 81, s. 18. *See also Rev. Stat. c. 40, s. 88.*

Appeal to lie  
against judg-  
ment of Com-  
missioners to  
the Court of  
Chancery.

**20.** The Commissioners and each of them, and the different Superintendents of the Indian Department, either now in office or hereafter appointed, shall, by virtue of their office and appointment, and without any other qualification, be Justices of the Peace within the County within which, for the time being they may be respectively resident or employed as such Commissioners. C. S. U. C. c. 81, s. 19.

Commission-  
ers to be Jus-  
tices of the  
Peace.



## SCHEDULE "A."

(Section 7.)

WRIT OF REMOVAL BY CONTINUANCE.

*Province of Ontario.*

Victoria, by the Grace of God, &amp;c.

To the Sheriff of

—Greeting:

Whereas by a certain Warrant of Removal made by one (or two, as the case may be) of the Commissioners appointed under the Great Seal of Our Province of Ontario, by virtue of Chapter twenty-seven of *The Revised Statutes of Ontario*, to prevent trespasses to Public Lands, you were formerly commanded to at (*here recite Commissioners' Warrant of Removal*), which said Warrant you lately returned to Us into Our Court of Queen's Bench (or Common Pleas,) at Toronto, and thereupon certified to Us that (*here insert the Sheriff's Return setting forth the return of the party or parties, or his belief that he or they would return unless the land be protected by the issue of process for the protection thereof*) according to the form of the Statute in such case made and provided: Therefore, We command you, that immediately after receipt hereof you proceed to the said lands and premises, and remove or cause to be removed all and singular such person and persons, if any, whom you shall find in or upon the same, from the possession thereof, and give or cause to be given to such person or persons as shall for that purpose be appointed by Our said Commissioners, or any one of them, under their or his hand and seal, the full, quiet and peaceable possession of the said premises and every part and parcel thereof, and that such person or persons, and all others having from time to time a similar warrant from Our said Commissioners, or any one of them in such quiet and peaceable possession of the said premises, you support, help and maintain from time to time, as often as occasion shall and may require; and what you shall do in the premises you shall certify to Us in Our said Court of Queen's Bench or Common Pleas, before Us, at Toronto, on the                      day of                      Term next, together with this Writ; and herein fail not at your peril.

Witness the Honourable                      , Chief Justice, &c. (*as in other Writs issued out of the said Court.*)

## SCHEDULE "B."

(Section 11.)

WRITS OF FIERI FACIAS AND CAPIAS AD SATISFACIENDUM.

*Province of Ontario.*

Victoria, by the Grace of God, &amp;c.

To the Sheriff of

—Greeting:

Whereas by a certain conviction had before                      , two of Our Commissioners appointed under the Great Seal of Our Province of Ontario, by virtue of Chapter twenty-seven of *The Revised Statutes of Ontario*, to prevent trespasses to Public Lands, it was considered by the said Commissioners (*here set out the conviction*), which said conviction for certain reasons We caused to be certified to Us in our Court of Queen's Bench (or Common Pleas) at Toronto, according to the form of the Statute in such case

made and provided : We therefore, being willing to be satisfied the said fine so by the Commissioners set and imposed upon the said

, do hereby command you that you levy of the goods and chattels of the said , in your County, the amount of the said fine so set and imposed upon him as aforesaid, so that you may have that money in Our said Court of Queen's Bench (or Common Pleas) before Us, at Toronto, on the day of next ; and if it shall happen that sufficient goods and chattels of the said shall not be found in your County for payment of the said fine, then, We command you that you levy of the lands and tenements of the said , in your County, the amount of the said fine so set and imposed on him as aforesaid, and have that money in Our said Court before Us on the day and at the place aforesaid ; and if it shall happen that sufficient neither of goods or chattels, nor lands or tenements of the said shall be found in your County for payment of the said fine, then, We command you that you take the body of the said wheresoever he shall be found in your County, and him safely keep in your prison until he hath fully satisfied Us the said fine so set and imposed upon him as aforesaid : and in what manner you shall have executed this Our Command make appear to Us in Our said Court, before Us, on the day and at the place aforesaid, and have then there this Writ.

Witness the Honourable  
Writs issued out of the same Court.)

Chief Justice (as in other

## CHAPTER 28.

### An Act respecting the Clergy Reserves.

Ontario Municipalities Fund derived from Clergy Reserves, s. 1.	Investment of moneys by municipalities, s. 7.
Money arising from Clergy Reserves to be paid to Provincial Treasurer, s. 2.	Recovery of moneys paid under an erroneous return, s. 8.
Apportionment among municipalities, s. 3, 4.	Part of Imp. Act, 3-4 V. c. 78 repealed, s. 9.
Returns to be made by Clerks of municipalities, s. 5, 6.	Certain lands to be deemed part of Clergy Reserves, s. 10.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. The moneys arising from the Clergy Reserves in Ontario shall form a separate Fund, to be called "The Ontario Municipalities Fund," which shall consist of, Proceeds of Clergy Reserves to form separate fund

(a.) All moneys arising from the sale of Clergy Reserves in Ontario, whether now funded or invested either in the United Of what to consist.

Kingdom or in Canada, or remaining uninvested, or to arise from such sales;

(b.) The interest and dividends of moneys forming part of such Fund;

(c.) The interest upon sales of Clergy Reserves on credit, and

(d.) Rents, issues and profits arising from Clergy Reserves demised or to be demised for any term of years, and other casual and periodical incomes arising from Clergy Reserves,

after deducting therefrom the actual and necessary expenses attending the sales of the said Clergy Reserves, and of managing the same and the Fund aforesaid. C. S. C. c. 25, ss. 1 & 2.

Moneys to be paid into the Provincial Treasurer's hands for the purposes of this Act.

2. The moneys forming the said Fund shall be paid into the hands of the Provincial Treasurer, and shall be by him applied to the purposes hereinafter mentioned, under the authority of this Act, or any general or special Order or Orders to be made by the Lieutenant-Governor in Council. C. S. C. c. 25, s. 2.

How the unappropriated balance of the Municipalities Fund shall be apportioned yearly.

3. The amount of "The Ontario Municipalities Fund" remaining unexpended and unappropriated, under the foregoing provisions, on the thirty-first day of December in each year, shall, by the Provincial Treasurer, be apportioned equally among the several City, Town, incorporated Village and Township Municipalities in Ontario, in proportion to the number of ratepayers resident within the Municipalities whose names appear on the assessment rolls of such Municipalities for the year next before the time of such apportionment. C. S. C. c. 25, s. 7.

Money due from the Municipality to Provincial Treasurer, may be deducted.

4. If at the time when any such payment is to be made, any sum of money is payable by any Municipality to the Provincial Treasurer, for any cause whatever, and is overdue, he may retain in his hands, in satisfaction or part satisfaction thereof, the sum which would otherwise be payable to such Municipality, or so much thereof as may be equal to the sum so payable to him by the Municipality, and overdue, and he shall deliver to the Treasurer of the Municipality, or other proper officer thereof, a discharge in favour of the Municipality, for a sum equal to that so retained by him; And for the purposes of this section, each Union of Counties for municipal purposes shall be taken to be a County Municipality. C. S. C. c. 25, s. 9.

What shall be deemed a Municipality.

Clerks to make returns to the Provincial Treasurer.

5. The Clerk of every City, Town, incorporated Village and Township in Ontario shall, on or before the first day of December in each year, transmit to the Provincial Treasurer a true return of the number of resident ratepayers appearing on the revised assessment roll of his Municipality for the year in which such return is made; and shall accompany such return with an affidavit of the correctness of the return, made in the form of the Schedule to this Act before a Justice of the Peace. C. S. C. c. 25, s. 8; 36 V. c. 48, s. 189. See *Rev. Stat.* c. 174, s. 240.

Returns to be sworn to.

**6.** Any Clerk of any of the said Municipalities who fails to make any return required by the next preceding section by the time therein limited, shall for each failure be liable to a penalty of twenty dollars, to be paid to the Provincial Treasurer for the use of the Province, which penalty may be sued for and recovered by the Crown in any Court of competent jurisdiction. C. S. C. c. 25, s. 10 ; 36 V. c. 48, s. 189.

**7.** The several Municipalities aforesaid may by by-law set apart for any special purpose to be mentioned in such by-law, the whole or any part of the moneys derived from "The Ontario Municipalities Fund," and may invest the same in the purchase of Dominion, Provincial or Municipal Debentures, for the purposes mentioned in such by-law, and may from time to time sell and dispose of such securities, and reinvest the proceeds in other like securities, or otherwise appropriate the same in the manner mentioned in and directed by the said by-law or other by-law passed for that purpose. C. S. C. c. 25, s. 11 ; 40 V. c. 7, Sched. A (18). See also *Municipal Act, Rev. Stat. c. 174, s. 356*.

Penalty on Clerks not making such return.

Municipalities may set aside their share of the Clergy Reserve moneys for any special purpose, and invest it.

#### MISCELLANEOUS PROVISIONS.

**8.** In case it should at any time appear that by reason of an erroneous return too much money has been paid to a Municipality, the excess shall be a debt to the Crown, recoverable from such Municipality. C. S. C. c. 25, s. 13.

Recovery of money over-paid under erroneous return

**9.** So much of the Act of the Imperial Parliament, passed in the third and fourth years of the reign of Her Majesty Queen Victoria, and chaptered seventy-eight, as limits the quantity of lands forming part of the Clergy Reserves which may be sold in any one year without the previous approbation in writing of one of Her Majesty's Principal Secretaries of State, and so much of the said Act as makes any appropriation of any moneys forming part of the Clergy Reserves Fund, or arising from the sales of Clergy Reserves, other than such as is made by this Act, and so much of the said Act as is inconsistent with this Act, is repealed. C. S. C. c. 25, s. 14.

Repeal of certain parts of Imperial Act. 3-4 V. c. 78.

**10.** Any lands which have, under the authority of any Act at the time in force, been accepted in exchange for lands originally forming part of the Clergy Reserves in any part of this Province, shall be deemed to be Clergy Reserves for all the purposes of this Act. C. S. C. c. 25, s. 15.

Certain lands to be deemed part of Clergy Reserves.

#### SCHEDULE.

(Section 5.)

I, A. E., Clerk of the Municipality of the (City, Town, Township or Village, as the case may be) of \_\_\_\_\_ make oath and say that



the (above, within written, or annexed return, as the case may be) contains a true statement of the number of resident ratepayers appearing on the Assessment Roll of the said City (or as the case may be) for the year eighteen hundred and

(Signed) A. B.,  
Clerk of Municipality.

Sworn before me, &c.  
C. D.,  
Justice of the Peace.

## CHAPTER 29.

### An Act respecting Mining.

Short title, s. 1.	Forfeiture of claim—
Interpretation, s. 2.	For failure to give notice, s. 21.
Royalties on minerals and reservations of mines in patents repealed, ss. 3, 4.	For failure to work, ss. 22, 23.
No reservation of mines to be made in patents, s. 5.	Only one claim to be occupied at a time, s. 24.
Crown lands may be explored for mines, s. 6.	License to be exhibited, s. 25.
Sale of mining locations, ss. 7-12	Discoverers of new mines, ss. 26, 27.
Form and size of location, s. 9.	Party walls, ss. 28, 29.
Survey, s. 10.	Licensees not to damage other claims, s. 30.
Price, s. 11.	Registration to preserve claims rendered temporarily unworkable, ss. 31, 32.
Reservation of timber, s. 12.	Constables in mining divisions, s. 33.
Mining Divisions, s. 13.	Riots in mining divisions, s. 34.
Inspector and officers, ss. 14, 15.	Regulations by Lieut.-Governor, s. 35.
Mining licenses, s. 16.	Penalties for contravention of this Act, ss. 36-40.
Power of licensees, ss. 17, 18.	Inspectors to have no interest in mining claims, s. 41.
Dimensions of mining claims, ss. 19, 20.	
Notice of claims to be given to Inspector, s. 21.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.      1. This Act may be cited as "*The General Mining Act.*"

Interpretation clause.      2. In the construction of this Act, and of all Orders in Council, or regulations under it, if not inconsistent with the context or subject matter, the following terms shall have the respective meanings hereby assigned to them, that is to say :—

(1.) The verb "mine," and the participle "mining," shall mean "Mine" and "mining," and include any mode or method of working whatsoever, whereby the soil or earth, or any rock, stone, or quartz, may be disturbed, removed, carted, carried, washed, sifted, smelted, refined, crushed, or otherwise dealt with for the purpose of obtaining any metal or metals therefrom, whether the same may have been previously disturbed or not.

(2.) "Mines" shall mean and include all rocks, soils, or strata, "Mines." containing any metal or metals, and all places where the work of mining as above defined may be carried on.

(3.) "Mining Division" shall mean and include any tract of "Mining division," country declared to be a Mining Division within this Act.

(4.) "Crown Lands" shall mean and include all Crown Lands, "Crown School Lands, or Clergy Lands, not in the actual use or occupation of the Crown, or of any public department of the Government of the Dominion of Canada or of this Province, or of any officer or servant thereof, and not under lease or license of occupation from the Crown or the Commissioner of Crown Lands, and as to which no adverse claim exists, which is subsequently recognized by the Commissioner of Crown Lands." lands."

(5.) "Party wall" shall mean a bank of earth or rock left between two excavations. "Party wall." 32 V. c. 34, s. 42.

3. All royalties, taxes or duties which, by any patent or patents heretofore issued, have been reserved, imposed or made payable upon, or in respect of any ores or minerals extracted from the lands granted by such patents, and lying within this Province, are hereby repealed and abandoned; and such lands, ores and minerals shall henceforth be free and exempt from every such royalty, tax or duty. 32 V. c. 34, s. 3.

All royalties, etc., imposed by any patent repealed.

4. All reservations of gold and silver mines contained in any patent or patents heretofore issued, granting in fee simple any land or lands situate within this Province, are hereby rescinded and made void, and all such mines in or upon any such lands shall be deemed to have been granted in fee simple as part of such lands, and to have passed with such lands to the subsequent and present proprietors or owners thereof in fee simple. 32 V. c. 34 s. 4.

Reservations of gold and silver mines in any patent already issued rescinded.

5. No reservation or exception of gold, silver, iron, copper or other mines or minerals, shall be inserted in any patent from the Crown granting any lands in this Province sold as mining lands. 32 V. c. 34, s. 5.

No reservations in patents of mining lands.

6. Any person or persons may explore for mines or minerals on any Crown Lands, surveyed or unsurveyed, and not for the Crown lands may be ex-

pled for  
mines, etc.

time being marked or staked out and occupied as hereinafter mentioned. 32 V. c. 34, s. 6.

Crown lands  
may be sold as  
mining lands,  
etc.

7. Crown Lands supposed to contain mines or minerals may be sold as mining lands, or may, when situate within any Mining Division, be occupied and worked as "mining claims" under miners' licenses, as hereinafter provided. 32 V. c. 34, s. 7.

Mining loca-  
tions.

8. Such lands so sold, when situate in unsurveyed territory, or in Townships surveyed in sections, shall be sold in blocks to be called "mining locations." 32 V. c. 34, s. 8.

Form and size  
of mining loca-  
tions.

9. Mining locations under this Act shall conform to the following requirements :—

Territory bor-  
dering on lakes  
Superior and  
Huron, French  
River, etc.

1. In the unsurveyed territory to the north or north-west of the River Mattawan, Lake Nipissing and the French River, including the territory bordering upon Lakes Huron and Superior, and the River St. Mary, every regular mining location shall be rectangular in shape, and the bearings of the outlines thereof shall be due north and south and due east and west astronomically; and such location shall be of one of the following dimensions, namely, eighty chains in length by forty chains in width, containing three hundred and twenty acres, or forty chains square, containing one hundred and sixty acres, or forty chains in length by twenty chains in width, containing eighty acres.

When loca-  
tions border  
on lakes and  
rivers in said  
territory.

2. Where a mining location in the unsurveyed lands in the territory aforesaid, borders upon a lake or river, a road allowance of one chain in width shall be reserved along the margin of such lake or river; and the width of the location shall front on the said road allowance; and the bearings of the other outlines of the location shall be due north and south, and due east and west astronomically; and such location shall otherwise conform to the requirements of the preceding sub-section as nearly as the nature of the land will admit.

When in town-  
ships in said  
territory sur-  
veyed in sec-  
tions.

3. In the Townships in the said territory surveyed, or hereafter to be surveyed in sections, every mining location, after such survey, shall consist of a half section, a quarter section, or an eighth of a section.

Reservation  
for roads.

4. In all patents for such mining locations in the territory aforesaid, there shall be a reservation for roads of five per centum of the quantity of land professed to be granted.

Locations in  
other unsur-  
veyed terri-  
tory.

5. In the unsurveyed lands not situate within the limits of the territory aforesaid, mining locations shall be as may be defined by any Order in Council hereafter to be made. 32 V. c. 34, s. 9.

**10.** Mining locations in unsurveyed territory shall be surveyed by a Provincial Land Surveyor, and be connected with some known point in previous surveys, or with some other known point or boundary, (so that the tract may be laid down on the office maps of the territory in the Crown Lands Department,) at the cost of the applicants, who shall be required to furnish, with their application, the surveyor's plan, field notes and description thereof, showing a survey in accordance with this Act, and to the satisfaction of the Commissioner of Crown Lands. 32 V. c. 24, s. 10.

How mining locations in unsurveyed territory to be surveyed.

**11.** The price of all Crown Lands to be sold as mining locations in the said territory, mentioned in sub-section one of the ninth section of this Act, shall be one dollar per acre. 32 V. c. 34, s. 11.

Price of locations.

**12.** The patents for all Crown Lands, hereafter to be sold as mining lands, shall contain a reservation of all pine trees standing, or being on said lands, which pine trees shall continue to be the property of Her Majesty; and any person now or hereafter holding a license to cut timber or saw logs on such lands, may, at all times, during the continuance of such license, enter upon such lands, and cut and remove such trees, and make all necessary roads for that purpose; but the patentees, or those claiming under them, may cut and use such trees as may be necessary for the purpose of building, fencing and fuel, on the land so patented, or for any other purpose essential to the working of the mines thereon; and may also cut and dispose of all trees required to be removed in actually clearing the said land for cultivation; but no pine trees (except for the said necessary building, fencing and fuel, or other purpose essential to the working of the mine), shall be cut beyond the limit of such actual clearing; and all pine trees so cut and disposed of (except for the said necessary building, fencing and fuel, or other purpose aforesaid,) shall be subject to the payment of the same dues, as are at the time payable by the holders of licenses to cut timber or saw logs. 32 V. c. 34, s. 12.

Pine trees reserved.

Patentees may use timber for building, fencing, etc., on the land.

Timber cut to be subject to dues.

**13.** The Lieutenant-Governor in Council, may, from time to time, by Order in Council, declare such tract of country as may be described in and by such Order in Council a "Mining Division;" and by any other subsequent Order or Orders in Council may, from time to time, extend, add to or diminish the limits of such Division, or may otherwise amend, or may cancel such Order in Council; and, from and after the publication in the *Ontario Gazette* of any such Order in Council, the Mining Division therein mentioned and described, and all mines on Crown lands situate in such Division, shall be subject to the provisions of this Act, and to any regulations to be made under this Act. 32 V. c. 34, s. 13.

Mining divisions, how to be declared.



Appointment  
and powers of  
Inspectors of  
mining divi-  
sions.

**14.** The Lieutenant-Governor may appoint, for each Mining Division, or for any part thereof, an Inspector, who shall be under the direction of the Commissioner of Crown Lands, and, by Order in Council, may prescribe the duties and fix the salary of such Inspector. 32 V. c. 34, s. 14.

Inspector to  
be a J. P.

**15.** Every such Inspector shall be *ex officio* a Justice of the Peace of the County or United Counties, District or Districts, which a Mining Division comprehends or includes, in whole or in part, or in which, or in any portion of which, a Mining Division lies; and it shall not be necessary that any such Inspector shall possess any property qualification whatever in order to enable him lawfully to act as such Justice of the Peace

Powers to set-  
tle disputes be-  
tween  
licensees.

**16.** Every such Inspector shall have jurisdiction as a Justice of the Peace over all the territory comprised within the Division for which he is appointed, and shall have power to settle summarily all disputes between licensees as to the existence or forfeitures of mining claims, and the extent and boundary thereof, and as to the use of water and access thereto, and generally, to settle all difficulties, matters or questions between licensees which may arise under this Act; and the decision of any such Inspector, in all cases under this Act, shall be final, except where otherwise provided by this Act, or where another tribunal is appointed under the authority of this Act; and no case under this Act shall be removed into any Court by writ of *certiorari*. 32 V. c. 34, s. 14.

Decision to be  
final.

Mining licen-  
ses

**16.** The Inspector of any Mining Division may, on payment to him of a fee of five dollars, grant to the party applying for the same, a license to be called a "miner's license."

Duration, etc.,  
of license.

**2.** Every such miner's license shall be in force for one year from the date thereof, and shall not be transferable; and only one person shall be named therein, who shall be called the licensee, and who, before the expiration of the said license, or within not later than ten clear days thereafter, shall have the right to a renewal of the said license, by the Inspector for the Division, on payment to him of the like fee of five dollars, or such other sum as may then be the fee fixed by law for miner's licenses. 32 V. c. 34, ss. 15, 16.

Form thereof.

**3.** A miner's license may be in the following form:—

PROVINCE OF ONTARIO.

No.	(Name of division)	Mining Division.	\$5.
(Date.)		18	.

Miner's License.—Not Transferable.

Issued to A. B., under the provisions of "*The General Mining Act*," to be in force for one year from the date thereof.

C. D., Inspector of

Mining Division.

32 V. c. 34, s. 15.

**17.** A miner's license shall authorize the licensee personally, and not through another or others, to mine during one year from the date of such license, and from the date of any renewal thereof, on any mining claim marked or staked out by such licensee on Crown lands, as hereinafter provided ; but any person or persons not occupying any other mining claim, may be employed by such licensee to assist him in working such claim. 32 V. c. 34, s. 17.

Powers of licensees under license.

**18.** Such licensee shall have the right to mark or stake out within the Division mentioned in his license, a mining claim on any Crown lands (not for the time being included in any mining claim occupied by any other licensee,) by planting a wooden or iron picket at each of the four corners thereof, or otherwise marking the same as may be directed by any Order in Council, and to work the same. 32 V. c. 34, s. 18.

May mark out claim.

**19.** Each mining claim shall be of the following dimensions, namely :—

Dimensions of claims

1. For any one person, two hundred feet along a vein or lode by one hundred feet on each side thereof, measuring from the centre of the vein or lode.
2. Companies of two or more persons, who each hold a miner's license, may stake out and work additional feet along a vein or lode by the above width in the proportion of one hundred additional feet in length for every additional miner, not to exceed one thousand feet in length altogether and may work the claim jointly. 32 V. c. 34, s. 19.

**20.** Mining claims shall be laid out as far as possible, uniformly, and in quadrilateral and rectangular shapes ; and the measurements of all such claims shall be horizontal ; and the ground included in every such claim shall be deemed to be bounded under the surface by lines vertical to the horizon ; except that every mining claim shall include and shall authorize the licensee to work every dip, spur, and angle of the vein or lode laterally to the depth to which the same can be worked, with all the earth and minerals therein. 32 V. c. 34, s. 20.

Rules as to claims for laying out claims.

**21.** Every Inspector appointed under this Act, shall keep a book for the recording therein of all mining claims, which book shall be open to inspection by any person on payment of a fee of twenty cents ; and every licensee who has marked or staked out any mining claim under this Act, shall, within thirty days thereafter, give a notice thereof in writing to the Inspector of the Division, stating the name of such licensee, and indicating, by some general statement therein, the locality of such mining claim, and showing how and when the same was marked or staked out ; and the Inspector shall thereupon forthwith record

Forfeiture of claims for want of notice thereof,

the particulars of such notice in such book ; and, if such licensee fails to give such notice within the time aforesaid, the mining claim so marked or staked out shall be deemed to be forfeited and abandoned, and all right of the licensee therein to cease. 32 V. c. 34, s. 21.

and for allow-  
ing same to  
remain un-  
worked.

Proviso.

**22.** A mining claim shall also be deemed to be forfeited and abandoned, and all right of the licensee therein to cease, in case such mining claim remains unworked for the space of three months after the same has been first marked or staked out as aforesaid, or if the same at any time, after the expiration of the said three months, remains unworked for the space of fifteen days ; Provided, however, that in case it is shown to the satisfaction of the Inspector of the Division, either before the expiration of the respective periods aforesaid, or within fifteen days thereafter, that the non-working of any such claim arose from the illness of the licensee, or other reasonable cause satisfactory to the said Inspector, he may extend the time during which such mining claim may remain unworked for such further period of time as he thinks reasonable, and may in like manner, thereafter, for reasonable cause established to his satisfaction, grant further extensions of the time during which the said claim may remain unworked without being liable to forfeiture ; and the said Inspector shall forthwith enter in the said book all such enlargements or extensions of the time granted by him. 32 V. c. 34, s. 22.

Exception.

**23.** No mining claim within any Division shall be considered unworked, within the meaning of the last section, during the time that any Order in Council directs that work on mining claims within such Mining Division may be suspended. 32 V. c. 34, s. 23.

No person to  
occupy more  
than one claim  
at one time,  
except, etc:

**24.** No person shall occupy at the same time more than one mining claim on Crown Lands, except in the cases hereinafter provided for of registration of claims rendered temporarily unworkable. 32 V. c. 34, s. 24.

License to be  
exhibited to  
inspector on  
demand.

**25.** Every licensee shall be held and required to produce and exhibit his license to the Inspector for the Division, and to prove, to the satisfaction of the Inspector, that such license is in force, whenever required to do so by him. 32 V. c. 34, s. 25.

Right of dis-  
coverer of new  
mine.

**26.** The discoverer of any new mine shall be entitled to two mining claims of the area prescribed by sub-section one of section nineteen of this Act. 32 V. c. 34, s. 26.

What deemed  
a discovery.

**27.** No person shall be considered the discoverer of a new mine, unless the place of the alleged discovery is distant, if on a known vein or lode, at least three miles from the nearest known mine on the same vein or lode. 33 V. c. 34, s. 27.

**28.** A party wall of at least three feet thick shall be left between each mining claim on Crown lands, which said party wall shall be used in common by all parties as a mode of access to the stream, where one exists; and such party wall shall not be obstructed by any person or persons throwing soil, stone or other material thereon; and every person or persons so obstructing such party wall, shall be liable to a fine of not more than five dollars and costs; and, in default of payment of such fine and costs, to be imprisoned for any period not more than one month. 32 V. c. 34. s. 28.

Party walls to be left between claims, and kept clear.

Penalty.

**29.** If at any time it is found necessary or expedient to remove a party wall as aforesaid, the party so removing it shall, if required so to do, construct a new mode of access to the water in no wise more difficult as an approach than the one destroyed by the removal of the party wall, under a like penalty, as provided in the next preceding section; and, in case of a removal of a party wall, the minerals found therein shall belong to the owners of the adjoining claims, each of whom shall own the half next to his claim. 32 V. c. 34, s. 29.

Party removing party wall to construct new mode of access to water.

Removal of wall.

**30.** No person mining upon any Crown lands shall cause any damage or injury to the holder of any other claim than his own, by throwing earth, clay, stones or other material upon such other claim, or by causing or allowing any water which may be pumped or bailed or may flow from his own claim to flow into or upon such other claim, under a penalty of not more than five dollars and costs; and, in default of payment of such fine and costs, he may be imprisoned for any period not more than one month. 32 V. c. 34, s. 30.

Crown lands licensees not to damage other claims.

Penalty.

**31.** In case any mining claim on Crown lands occupied by any licensee, cannot be worked in consequence of an excess of water or other unavoidable cause, established to the satisfaction of the Inspector for the Division, such Inspector shall, on the application of said licensee, and on receipt of one dollar, make an entry in the book, to be kept by him as aforesaid, of the cause or reason for such claim not being worked; and thereupon and upon the licensee planting a wooden or iron picket as near the centre of such claim as possible, upon which is cut or painted his name or initial letters of his name, such licensee may occupy and work another mining claim; but, in case such licensee does not return and occupy such first mentioned claim within fifteen days after the adjacent or surrounding claim or claims have been shown to be workable, he shall forfeit all right and title to the said claim. 32 V. c. 34, s. 31.

Provision for registration of claim rendered unworkable for a time.

**32.** Any person found removing or disturbing, with intent to remove, any stake, picket, or other mark placed under the provisions of this Act, shall forfeit and pay a sum not exceeding twenty dollars and costs; and in default of payment of such

Penalty for removing picket.



fine and costs may be imprisoned for any period not exceeding one month. 32 V. c. 34, s. 32.

Appointment of constables in mining divisions.

**33.** Each Inspector appointed in and for a Mining Division under this Act, may appoint any number of constables not exceeding four; and the persons so from time to time appointed shall be, and they are hereby constituted, respectively, constables and peace officers for the purposes of this Act, for and during the terms, and within the Mining Divisions for which they are appointed respectively. 32 V. c. 34, s. 33.

Act respecting riots near public works to be in force in mining divisions.

Rev. Stat. c. 31.

**34.** The Lieutenant-Governor in Council may, as often as occasion requires, declare by proclamation that he deems it necessary that *The Act respecting Riots near Public Works*, being chapter thirty-one of these Revised Statutes, shall, so far as the provisions therein are applicable, be in force within any Mining Division or Divisions; and upon, from, and after the day to be named in any such proclamation, the first, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth, sections of the said Act shall, so far as the provisions thereof can be applied therein, take effect within the Mining Division or Mining Divisions designated in such proclamation; and the provisions of the said Act shall apply to all persons employed in any mine, or in mining within the limits of such Mining Division or Divisions, as fully and effectually to all intents and purposes, as if the persons so employed had been specially mentioned and referred to in the said Act.

Lieutenant-Governor may declare it not in force, etc.

2. The Lieutenant-Governor in Council may, in like manner, from time to time declare the said Act to be no longer in force in such Mining Division or Divisions; but this shall not prevent the Lieutenant-Governor in Council from again declaring the same to be in force in any such Mining Division or Mining Divisions; and no such proclamation shall have effect within the limits of any City. 32 V. c. 34, s. 34.

Exception.

Lieutenant-Governor in Council may make regulations for certain purposes, which shall have force of law.

**35.** The Lieutenant-Governor in Council may, from time to time, make all and every such regulation and regulations as he deems necessary or expedient, for the appointment of arbitrators or Mining Boards to hear and determine appeals from the decisions of Inspectors of Divisions; for the prescribing, defining and establishing the powers, duties and mode of procedure of such arbitrators or Mining Boards; for the opening, construction, maintenance and using of roads through or over any mining claims, mining locations or lands hereafter sold as mining lands; and for the opening, construction, maintenance and using of ditches, aqueducts or raceways through or over any such claims, locations or lands for the conveyance and passage of water for mining purposes, and generally for the purpose of carrying out this Act; and such regulations, after publication in the *Ontario Gazette*, shall have the force and effect of law. 32 V. c. 34, s. 35.

**36.** Every person contravening this Act, or any rule or regulation made under it, in any case where no other penalty or punishment is imposed, shall, for every day on which such contravention occurs, or continues or is repeated, incur a fine of not more than twenty dollars and costs; and, in default of payment of such fine and costs, he may be imprisoned for a term of not more than one month. 32 V. c. 34, s. 36.

Penalty for contravening this Act, when no other is provided.

**37.** Any Inspector for a Mining Division may convict upon view of any of the offences punishable under the provisions of this Act, or any regulations made under it. 32 V. c. 34, s. 37.

Inspector may convict on view.

**38.** The contravention on any day of any of the provisions of this Act, or of any regulation made under it, shall constitute a separate offence and may be punished accordingly. 32 V. c. 34, s. 38.

Separate offence on each day:

**39.** All fees, penalties and fines received under this Act, and the costs of all such convictions as take place before any Inspector or Magistrate appointed under this Act, shall form part of the Consolidated Revenue Fund of this Province, and be accounted for and otherwise dealt with accordingly; and the expenses of carrying this Act into effect, in any Mining Division or Mining Divisions, shall be paid by the Lieutenant-Governor out of the said Consolidated Revenue Fund. 32 V. c. 34, s. 39.

Application of fees, fines, and penalties.

**40.** The Inspector of any Mining Division, or any two Justices of the Peace, having jurisdiction in the locality, may try and summarily convict any person guilty of any offence under this Act, or of any breach of any of the provisions thereof, to which any fine or penalty, or forfeiture of any sum of money is attached, and shall have all the powers of Justices of the Peace under chapter seventy-four of these Revised Statutes; but this section shall not be construed to give jurisdiction to try or summarily convict for any breach of the provisions of the forty-first section of this Act. 32 V. c. 34, s. 40.

Inspector or Justices may try offences, as under Rev. Stat. c. 74.

**41.** No Inspector, appointed under this Act, shall, either directly or indirectly, while he is such Inspector, purchase or be or become proprietor of, or interested in, any Crown Lands or any mining claim within the Division for which he is Inspector; and any such purchase or interest shall be void; and, if any such Inspector offends in the premises, he shall forfeit his office, and the sum of five hundred dollars for every such offence, to be recovered in an action by any person who sues for the same. 32 V. c. 34, s. 41.

Inspector to have no interest in mining claims, etc.

Penalty.

### 3. *Public Works*

CHAP. 30—Public Works of Ontario, p. 300.

31—Prevention of Riots near Public Works, p. 316.

32—Prevention of the Sale of Intoxicating Liquors near Public Works, p. 321.

## CHAPTER 30.

### An Act respecting the Public Works of Ontario.

Interpretation, s. 1.	Power to alter line of public roads, s. 49.
Department of Public Works, s. 2.	Power to remove fences or ditches, s. 50.
Officers and their duties, ss. 3-12.	Drainage of swamp lands, ss. 51-57.
Property under control of the Department, ss. 14-18.	Official Arbitrators, ss. 58-61.
Duties of Commissioner of Public Works, ss. 19-24.	Cases in which arbitration may be had, ss. 62-65.
Powers as to taking possession of lands for public works and provisions for compensation of owners, ss. 25-48.	Powers of Arbitrators and procedure on arbitrations, ss. 66-72.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows :—

#### 1. In the construction of this Act

Interpretation clause. "Conveyance." (1.) "Conveyance" shall include a surrender to the Crown ; and any conveyance to the Crown or to the Commissioner of Public Works, or any officer of that Department, in trust for or to the use of the Crown, shall be held to be a surrender ; and

"Land" and "Property." (2.) "Land" and "Property" shall include real rights, easements, servitudes and all other things for which compensation is to be paid by the Crown under this Act. 39 V. c. 18, s. 17.

Department and Commissioner of Public Works. 2. There shall continue to be a Department of Public Works for Ontario, over which the "Commissioner of Public Works" for the time being, appointed by commission under the Great Seal, shall preside. 37 V. c. 26, s. 1 (1).

**3.** The Lieutenant-Governor may also appoint an Architect, Architect, Engineer, Secretary, Law Clerk, Accountant, and other officers. an Engineer, a Secretary, a Law Clerk, an Accountant, and such other officers as may be necessary for the proper conduct of the business of the Department. 37 V. c. 26, s. 1 (2); 40 V. c. 7, *Sched. A.* (20).

**4.** The Lieutenant-Governor may also appoint, from time to time, as many architects, engineers, surveyors, clerks of works, Temporary architects, etc. superintendents, lockmasters, bridge-tenders, servants, and other officers as he may deem necessary for the construction, maintenance, use and repair of Public Works, and the property, real or personal, connected therewith or belonging thereto. 37 V. c. 26, s. 1 (3).

**5.** The Commissioner shall have the management of the Department, and it shall be his duty to oversee and direct the other officers and servants of the Department; and he shall have such other powers and duties as may be assigned to him by the Lieutenant-Governor in Council, and may suspend from duty any officer or servant of the Department who refuses or neglects to obey his instructions as such Commissioner. 32 V. c. 28, s. 4. Duties and powers of the Commissioner

**6.** It shall be the duty of the Architect to prepare plans, Duties of Architect. drawings, specifications and estimates, for all public buildings and the works connected therewith, and the grounds thereto belonging, which are about to be constructed, altered, repaired or laid out by the Department; and, in respect thereof, to report for the information of the Commissioner on any question which may be submitted to him; to examine and revise the plans, drawings, specifications, estimates and recommendations of other architects and officers; to prepare all certificates, and to check and verify all accounts; to conduct all architectural correspondence; to transmit to the Secretary all outward correspondence to be copied in the Public Works' Letter Book, and all documents that require to be filed or registered; to make an annual report to the Commissioner; and generally to advise the Department on all architectural questions submitted to him by the Commissioner. 37 V. c. 26, s. 1 (4); 40 V. c. 7, *Sched. A.* (21).

**7.** It shall be the duty of the Engineer to prepare maps, Duties of Engineer. plans, drawings, specifications and estimates of all Public Works and lands thereto belonging, which are about to be constructed, altered, repaired, laid out or surveyed by the Department, except those which are by the preceding section, as above mentioned, placed under the direction of the Architect; and in respect of such Public Works and lands, to report for the information of the Commissioner on any question which may be submitted to him; to examine and revise the maps, plans, drawings, specifications, estimates and recommendations of other engineers, surveyors and officers; to prepare all certifi-



cater and to check and verify all accounts; to conduct all engineering correspondence; to transmit to the Secretary all outward correspondence to be copied in the Public Works' Letter Book, and all documents that require to be filed or registered; to make an annual report to the Commissioner; and generally to advise the Department on all engineering questions submitted to him by the Commissioner. 37 V. c. 26, s. 1 (4).

Duties of  
Secretary

8. It shall be the duty of the Secretary to conduct all general correspondence connected with the Department, under the instructions of the Commissioner; to see that all accounts are prepared in duplicate, and that one copy of each, properly certified and approved is sent to the Provincial Treasurer for submission to the Executive Council; to file all accounts and documents; to keep the ordinary indexes and also one "Subject Matter Index of the Letter Books and Register;" to sign requisitions for office supplies and contingencies; to prepare the Departmental pay-list, draw the money on cheques from the Treasurer's office and pay the salaries; to have charge of the Departmental seal, and of the Post Office franking stamp (if any); and generally to do and perform all such acts and things pertaining to the business of the Department as he may from time to time be directed to do and perform by the Commissioner; and a copy of any map, plan or document in the Department certified by him to be a true copy, and sealed with the seal of the Department, shall be held to be authentic, and shall be *prima facie* evidence of the same legal effect as the original in any Court or elsewhere. 37 V. c. 26, s. 1 (5).

Duties of Law  
Clerk.

9. It shall be the duty of the Law Clerk to prepare all contracts, bonds, deeds and documents of a legal nature relating to Public Works, and to see that the same are properly executed; to examine the papers relating to, and to report to the Commissioner upon all applications for the sale of drainage debentures; to conduct all legal correspondence; and generally to advise the Department on all legal questions relating to Public Works and the property connected therewith, which may be submitted to him by the Commissioner. 37 V. c. 26, s. 1 (5).

Duties of  
Accountant.

10. It shall be the duty of the Accountant to check all accounts relating to Public Works, and to mark thereon the appropriations to which the same are properly chargeable, and to keep all necessary books and accounts relating to appropriations for Public Works, and the expenditure in respect thereof. 37 V. c. 26, s. 1 (5).

What acts  
only shall bind  
the Depart-  
ment.

11. The Commissioner shall have power to enter into any contract with any person that may be necessary or advisable in carrying out the provisions of this Act, or any of them; but no deeds, contracts, documents or writings shall be deemed to be binding on the Department, or shall be held to be the acts of the

Commissioner, unless signed and sealed with the seal of the Department by him. 32 V. c. 28, s. 7.

**12.** All actions, suits and other proceedings at Law or in Equity, for the enforcement of any contract, for the recovery of damages for any tort or breach of contract, or for the trial of any right, in respect of any property, real or personal, under the control of the Department, shall be instituted in the name of Her Majesty's Attorney-General for the Province. 32 V. c. 28, s. 8.

Actions for enforcing contracts, etc.

**13.** The Lieutenant-Governor may require any person or any Provincial officer, having the possession of any maps, plans, specifications, estimates, reports or other papers, books, drawings, instruments, models, contracts, documents or records, not being private property, and relating to any Public Work, to deliver the same without delay to the Secretary of the Department. 32 V. c. 28, s. 9.

Possession may be required of maps, etc., relating to Public Works.

**14.** All land, streams, water-courses and property, real or personal, heretofore or hereafter acquired for the use of Public Works; all canals, locks, dams, hydraulic works, harbours, piers and other works for improving the navigation of any water; all slides, dams, piers, booms and other works for facilitating the transmission of timber; all hydraulic powers created by the construction of any Public Works; all roads and bridges; all public buildings; all railways and rolling stock thereon; all vessels, dredges, scows, tools, implements and machinery for the improvement of navigation; all drains and drainage works, and all property heretofore or hereafter acquired, constructed, repaired, maintained or improved at the expense of the Province, and not under the control of the Dominion Government, shall be and remain vested in Her Majesty and under the control of the Department. 32 V. c. 28, s. 10.

What property, &c., to be under control of Department.

**15.** The Lieutenant-Governor may from time to time, by proclamation, declare any other property, real or personal, and any works, roads, bridges, harbours, slides or buildings, or other things specified in the next preceding section, and purchased or constructed at the public expense, to be Public Works, subject to the provisions of this Act, and they shall thenceforth be vested in Her Majesty and under the control of the Department. 32 V. c. 28, s. 11.

Other property, &c., may be so placed by proclamation.

**16.** Any property, real or personal, when no longer required for the use of any Public Work, may be sold, leased or disposed of under the authority of the Lieutenant-Governor:

Property not required for Public Work may be sold.

2. Such property shall be so sold, leased or disposed of by tender or public auction, except leases for a term not exceeding five years, which leases may be made without tender or public auction; and the proceeds of all such sales, leases and disposi-

tions shall be accounted for as public money. 32 V. c. 28, s. 12; 40 V. c. 7, *Sched. A* (19.)

Existing and future contracts to be valid.

**17.** All contracts respecting any Public Work or property, real or personal, under the control of the Department, heretofore or hereafter entered into by the Commissioner, or by any other person duly authorized to enter into the same, shall enure to the use of Her Majesty, and may be enforced as if they had been entered into with Her Majesty under the authority of this Act. 32 V. c. 28, s. 13.

Public Works to be under control of Department.

**18.** All Public Works hereafter constructed or completed at the expense of the Province shall, unless otherwise provided by law, be under the control of the Department and subject to the provisions of this Act. 32 V. c. 28, s. 14.

Commissioner to have direction of Public Works.

**19.** The Commissioner shall direct the construction, maintenance and repair of all Public Works in progress, or constructed or maintained at the expense of the Province, and which are by this Act, or may be hereafter, placed under the control of the Department. 32 V. c. 28, s. 15.

Attesting accounts of contractors, &c.

**20.** The Commissioner may require any account sent in by any person employed by the Department to be attested on oath, which oath, as well as that to be taken by any witness, the Commissioner may administer. 32 V. c. 28, s. 16.

Power to examine persons on oath.

**21.** The Commissioner may send for and examine on oath all such persons as he deems necessary touching any matter upon which his action is required, and may cause such persons to bring with them such papers, plans, books, documents and things as it may be necessary to examine with reference to such matter, and may pay such persons a reasonable compensation for their time and disbursements; and such persons shall attend at the summons of the Commissioner after due notice, under the penalty of twenty dollars in each case. 32 V. c. 28, s. 17.

Penalty.

Annual report of Commissioner.

**22.** The Commissioner shall make and submit to the Lieutenant-Governor an annual report on all the Works under the control of the Department, to be laid before the Legislative Assembly within twenty-one days from the commencement of each Session, showing the state of each Work and the amounts received and expended in respect thereof, with such further information as may be requisite to enable the Assembly to judge of the working of the Department. 32 V. c. 28, s. 18.

Tenders to be invited for works.  
Exception.

**23.** It shall be the duty of the Commissioner to invite tenders by public advertisement for the construction and repair of all Public Works, except in cases of pressing emergency, where delay would be injurious to the public interest, or where, from the nature of the Work, it can be more expeditiously and eco-

nomically executed by the officers and servants of the Department. 32 V. c. 28, s. 19.

**24.** The Commissioner, where any Public Work is being carried out by contract, and in all other cases, shall take all reasonable care that security be given to and in the name of Her Majesty for the due performance of the Work within the amount and time specified for its completion; and in all cases where it seems to the Commissioner not to be expedient to let such Work to the lowest bidder, it shall be his duty to report the same and obtain the authority of the Lieutenant-Governor before passing by such lowest tender; but no sum of money shall be paid to the contractor, nor shall any Work be commenced on any contract until the contract has been signed by all the parties therein named, nor until the requisite security has been given. 32 V. c. 28, s. 20.

Security to be taken from contractors.

Provision when lowest tender is not taken.

#### POWER TO TAKE LANDS, ETC.

**25.** The Commissioner may authorize any engineer, agent servant or workman employed by or under him to enter into and upon any land, to whomsoever belonging, and to survey and take levels of the same, and to make such borings or sink such trial-pits as he deems necessary for any purpose relative to the works under the control of the Department. 32 V. c. 28, s. 21.

Power to make surveys, &c.

**26.** The Commissioner may employ any engineer or any person duly licensed or empowered to act as a surveyor for any Province in Canada, to make any survey or establish any boundary, and furnish the plans and description of any property acquired or to be acquired by Her Majesty for the use of the Province; and such surveys, boundaries, plans and descriptions shall have the same effect as if the operations pertaining thereto or connected therewith had been performed by a land surveyor duly licensed and sworn in for the Province. 32 V. c. 28, s. 22.

Certain persons employed by the Department as surveyors to have same powers as licensed surveyors.

**27.** The boundaries of such property may be permanently established by means of proper stone or iron monuments, planted by the engineer or surveyor so employed by the Commissioner, and shall be of the same effect to all intents and purposes as if such boundaries had been drawn and such monuments planted by a land surveyor duly licensed and sworn in for the Province, and shall be held to be the true and unalterable boundaries of such property: but such boundary lines shall be so established, and such monuments of iron or stone be planted only after due notice thereof has been given in writing to the owners of the lands to be thereby affected, and a written description of such boundaries shall be approved and signed in the presence of two witnesses by such engineer or surveyor on behalf of the Commissioner, and by the other parties concerned, or, in case of the refusal

Establishment of boundaries to property acquired by Her Majesty.



of any party to approve or sign the same, such refusal shall recorded in such written description: and such boundary marks or monuments shall be planted in the presence of at least one witness, who shall sign the said written description, which shall afterwards be deposited with the Secretary of the Department as part of the records of the office. 32 V. c. 28, s. 22.

Power to take materials from uncleared lands.

**28.** The Commissioner and his agents may enter upon any uncleared or wild land, and take therefrom all timber, stones, gravel, sand, clay, or other materials which he or they may find necessary for the construction, maintenance, and repair of Public Works, or property, real or personal, under the control of the Department; or may lay any materials upon any such land; and the Commissioner may construct, take and use all such temporary roads to and from such timber, stones, gravel, sand, clay, or other materials as may be required by him or his agents for the convenient passing to and from the works during their construction and repair; and may enter upon any land for the purpose of making proper drains to carry off the water from any Public Work, or for keeping such drains in repair. 32 V. c. 28, s. 24.

Power to acquire and possess lands, etc.

**29.** The Commissioner of Public Works may acquire and take possession, for and in the name of Her Majesty, of any land or real estate, streams, waters, water-courses, fences and walls, the appropriation of which is in his judgment necessary or expedient to be acquired or taken for the use, construction or maintenance of any Public Work or building; or for the purpose of draining any public building, or for the sewage service thereof; or for the use, construction or maintenance of hydraulic privileges made or created by, from or at any Public Work; or for the purpose of draining; or for the enlargement or improvement of any Public Work, or for obtaining better access thereto; or for any other public purposes authorized by the Legislature or by the Lieutenant-Governor, and to whatever Department of the Government the purpose may happen to belong; and the Commissioner may, for any such purpose, contract with all persons, guardians, tutors, curators and trustees whatsoever, not only for themselves, their heirs, successors and assigns, but also for and on the behalf of those whom they represent, whether infants, absentees, lunatics, married women, or other persons otherwise incapable of contracting, possessed of or interested in such lands, real property, streams, waters and water-courses; and all such contracts, and all conveyances or other instruments made in pursuance of any such contract, shall be valid to all intents and purposes whatever. 39 V. c. 18, s. 1.

Parties enabled to contract.

Taking possession when parties under disability.

**30.** In case the owner of any land or other property, the acquisition whereof is required as aforesaid, is under disability and has no representative known to the Commissioner with whom a valid agreement can be made, the Commissioner may,

without notice or tender of compensation, take possession of the said land, after such advertisement as is required where the owner does not reside on or near the property. 39 V. c. 18, s. 2. See sec. 48.

**31.** In case the owner of the land or property to be taken is an infant, or other person under disability, and has no guardian or committee legally authorized to represent his interest in the said land, the Court of Chancery or a Judge thereof, or the Judge of the County Court of the County in which the land lies, shall, upon the application by petition of the Commissioner, appoint some person to represent the interest of the infant or other person under disability, and shall determine the compensation to be paid by the Commissioner to the person so appointed for his services. Application for representation of those under disability.

2. Marriage shall not constitute a disability requiring an appointment to be made under this Act. 39 V. c. 18, s. 3. Marriage not such a disability.

**32.** No such appointment shall be required where the person under disability is only a part owner, and another person not under any disability, who is also a part owner, has agreed to sell, or has been served in this Province with a proposal to purchase, or a tender of purchase money, and in no such case shall it be necessary that the interest of the infant be represented in any dispute which may arise as to the value of the property taken. 39 V. c. 18, s. 4. Persons under disability only part owners,

**33.** The preceding section shall not apply where the infant or other person under disability holds an estate of a different nature from that of the person not under disability, but shall apply in all cases where they are part owners of the same estate, although in different proportions. 39 V. c. 18, s. 5. or holding estate of different nature from part owner.

**34.** The said Judge of the County Court, or such person as the Court of Chancery may direct, shall have authority to execute a conveyance for and in the name of any infant or other person under disability, whether the case requires or does not require the appointment of some person to represent the interest of the infant or other person under disability, and such execution shall be expressed to be under the authority of this Act. 39 V. c. 18, s. 6. Conveyance of lands of infants, &c.

**35.** When any resistance or forcible opposition is offered or apprehended to possession being taken of any land, or to the exercise of any right authorized under this Act, the Judge of the County or District Court of the County or District in which the land to be taken, or in respect of which the right is to be exercised, lies, may issue his warrant to the Sheriff of the District or County, or to a bailiff, as he may deem most suitable, to put the Commissioner, his servants or agents, in possession, and to put down such resistance or opposition, which the Sheriff or bailiff, taking with him sufficient assistance, shall accordingly do. 39 V. c. 18, s. 7. Resistance to taking possession of land

Compensation  
may be deter-  
mined by the  
Official  
Arbitrators.

**36.** The Commissioner may, if he thinks fit, in any case where any person is entitled to an arbitration under this Act, take such steps as may be necessary in order to have the amount of compensation determined by the Board of Official Arbitrators. 39 V. c. 18, s. 8.

Payments  
made under  
this Act.

**37.** Where, under or by virtue of this Act, any payment is to be made by the Commissioner of Public Works, the same shall be payable out of such moneys as may be voted by the Legislature of this Province for that purpose, and not otherwise, and the Commissioner shall not be in anywise personally liable thereto, or for any proceedings had or taken by virtue of this Act. 39 V. c. 18, s. 9.

Compensation  
to stand in the  
place of land  
taken without  
consent of  
owner, as to  
all charges  
thereon.

**38.** The compensation money agreed upon, paid into Court as hereinafter provided, or awarded by the Official Arbitrators, for any lands or property acquired or taken by the Commissioner, and which may under this Act be taken by the said Commissioner without the consent of the proprietor, shall stand in the stead of such lands or property; and any claim to or incumbrance upon such lands or property shall, as respects the Crown, be converted into a claim to such compensation money or to a proportionate amount thereof, and shall be void as respects the lands or property themselves, which shall, by the fact of the taking possession thereof under this Act, notwithstanding any irregularity in the previous proceedings, become and be absolutely vested in the Crown, as shall also any lands or property taken possession of by the Crown under this Act, whether there be or be not any conveyance, agreement or award respecting the same,—subject always to the determination of the compensation to be paid, and to the payment thereof when such conveyance, agreement or award has been made. 39 V. c. 18, s. 10.

All lands  
taken under  
this Act  
vested in the  
Crown.

Compensation  
may be paid  
into Court  
where person  
entitled is un-  
known, &c.

**39.** If the party conveying such lands or property could not, without this Act, have conveyed the same or agreed for the compensation to be paid therefor, or if any owner or party to whom the compensation money or any part thereof is payable, refuses to execute the proper conveyance or other requisite instrument of transfer of the premises, or if the party entitled to claim the same cannot be found or is unknown to the Commissioner, or if the Commissioner has reason to fear any claim or incumbrance, or if for any other reason he deems it advisable, the Commissioner may pay such compensation money or award (or if there has been no compensation money agreed upon or amount awarded, then such sum of money as in the opinion of the Commissioner is sufficient compensation for such lands or property) into the Court of Chancery (with the interest thereon for six months), and may deliver to the Registrar or other proper officer of the Court a copy of the conveyance, or of the agreement or award, if there be no conveyance, certified by the Commissioner; and if there be neither conveyance

If no compen-  
sation has been  
determined.

nor award, may deliver to the said officer a notice specifying the lands or property so acquired or taken. 39 V. c. 18, s. 11.

**40.** A notice, in such form and for such time as the Court may appoint, shall be inserted by the officer of the Court in some newspaper, published in the District or County in which the lands are situate, if there be any, which shall state that the title of the Crown, that is, the conveyance, agreement or award, or if there be none such, then the notice of the Commissioner to the said officer of the Court as hereinbefore provided, is under this Act, and shall call upon all persons entitled to the lands or to any part thereof, or representing or being the husbands of any parties so entitled, or claiming to hold or represent incumbrances thereon or interests therein, to file their claims to the compensation or any part thereof. 39 V. c. 18, s. 12.

Notice to parties interested by advertisement.

**41.** All such claims shall be received and adjudged upon by the Court, and the said proceedings shall forever bar all claims to the compensation or any part thereof, including any claim in respect of dower, as well as in respect of all mortgages or incumbrances upon the same; and the Court shall make such order for the distribution, payment or investment of the compensation, and for the securing of the rights of all parties interested, as to right and justice and according to the provisions of this Act and to law may appertain. 39 V. c. 18, s. 12.

Court to distribute the compensation money.

**42.** The costs of the proceedings or any part thereof shall be paid by the Commissioner or by any other party as the Court may order, and if the order of distribution is obtained in less than six months from the payment of the compensation into the Court, the Court shall direct a proportionate part of the interest to be returned to the Commissioner; and if from any error, fault or neglect of the Commissioner, it is not obtained until after the six months have expired, the Court shall order the Commissioner to pay into Court the interest for such further period as may be right. 39 V. c. 18, s. 13.

As to costs of such proceedings.

**43.** In any case where the price or compensation money agreed for or awarded does not exceed one hundred dollars, it may be paid to the party who, under this Act, can lawfully convey the lands or property, or agree for the compensation to be made in the case, with the same effect as if it had been paid into Court under this Act; saving always the rights of any other party to such compensation money as against the party receiving the same. 39 V. c. 18, s. 13.

If compensation does not exceed \$100.

**44.** If any party entitled to any compensation as aforesaid is dissatisfied with the amount so paid by the Commissioner into Court as aforesaid, the question of the amount of compensation may be referred to the Board of Arbitrators, and proceedings thereon shall be had according to this Act, and the Com-

Arbitration if any party entitled is dissatisfied with amount paid into Court.



missioner may pay the amount of any award thereon into Court as the case may be, and the Court shall make such order as to the same as if it had been paid in as compensation, as hereinbefore mentioned. 39 V. c. 18, s. 14.

Payment of  
compensation  
therefor.

**45.** Compensation, to be agreed on between the parties or appraised and awarded in the manner hereinafter set forth, for such land, real or personal property, streams, water and water-courses, timber, stone or other material, or for any damage thereto, shall, except where the same is paid into Court under the thirty-ninth section of this Act, be made to the owner or occupier of such land or property, or to the person suffering such damage aforesaid, and shall be paid within six months after the amount of such compensation has been agreed on, or appraised and awarded; and where such compensation is paid into Court under said section, the same shall be so paid into Court within the said time. 32 V. c. 28, s. 25; 39 V. c. 18, s. 15.

Abandonment  
of proposed  
purchase

**46.** In case the Commissioner of Public Works has not taken possession of the land or property in respect of which compensation is awarded, he may, within one month after the publication of the award, elect to abandon the proposed purchase, and in that event the Commissioner shall pay to the owner or occupier all costs and charges reasonably incurred by him in and about the arbitration or other proceedings. 39 V. c. 18, s. 16.

Notice and  
tender before  
taking pos-  
session.

**47.** Where any such owner or occupier refuses or fails to agree to convey his estate or interest in any land, real property, stream or water-course as aforesaid, the Commissioner may tender the reasonable value in his estimation of the same, with notice that the question will be submitted to arbitration as hereinafter mentioned; and in every case the Commissioner may, three days after such agreement or tender and notice, authorize possession to be taken of such land, real property, stream or water-course so agreed or tendered for. 32 V. c. 28, s. 26.

Notice when  
the owners do  
not reside on  
the land.

**48.** If the owner of such land, real property, stream or water-course, does not reside on or near the property so required, then one month's notice shall be given in the *Ontario Gazette*, and in two newspapers published in or near the District or County in which such property is situate, of the intention of the Commissioner to cause possession to be taken of such land or real property, stream or water-course; and, after ten days from the publication of the last notice, possession may be taken accordingly. 32 V. c. 28, s. 27.

Power to alter  
the line of any  
public road.

**49.** The Commissioner may discontinue or alter any part of a public road, where it is found to interfere with the proper line or site of any Public Work; but before discontinuing or altering such public road he shall substitute another convenient road in lieu thereof; and the land theretofore used for

any road or part of a road so discontinued, may, without the authority prescribed in section sixteen, be transferred by the Commissioner to, and shall thereafter become the property of, the owner of the land of which it originally formed part, or may be dealt with as prescribed in section sixteen. 32 V. c. 28, s. 28.

**50.** Wherever, in the prosecution of any Public Work, it is found necessary to take down or remove any wall, fence or boundary mark of any owner or occupier of land adjoining such Public Work, or to construct any back-ditches or drains for carrying off the water accumulating behind the banks of any public canal, the Commissioner shall cause to be replaced such wall, fence or boundary mark as soon as the necessity which caused its being taken down or removed has ceased; and after the same has been so replaced, or when such drain or back-ditch is completed, the owner or occupier of such land shall maintain such wall, fence or boundary mark, drains or back-ditches to the same extent as such owner or occupier might by law be required to do, if such wall or fence had never been so taken down or removed, or such drains or back-ditches had always existed. 32 V. c. 28, s. 29.

Fences, &c., removed or ditches made during prosecution of public work to be replaced.

Obligation of land owners.

#### DRAINAGE OF LANDS.

**51.** The Commissioner shall have power to employ competent engineers and surveyors to make the necessary examinations, surveys and levels of any swamp or bog land, or land occasionally or permanently flooded with water, and such engineers and surveyors shall be under the direction of the Department, and shall report to the Commissioner on the best means of draining or preventing the flooding of such land, the cost of the same, the quantity and quality of land proposed to be drained or saved from flooding, with an estimate of the improved value of such land. 32 V. c. 28, s. 30.

Power to employ engineers, &c., to examine land for drainage, &c.

**52.** The Commissioner shall submit to the Lieutenant-Governor, in the annual report to be laid before the Legislature, a statement of the results of such examination, surveys and levels, and an estimate of the cost of reclaiming such lands, so as to render them available for cultivation, with his recommendation respecting the same. 32 V. c. 28, s. 31.

Report thereon.

**53.** The Commissioner shall have power to make contracts, in the manner hereinbefore prescribed, for the construction and repair of drains, bridges, roads, dams, dykes, slides and other works necessary or proper to prevent the flooding of, or to carry off the water from any such land as aforesaid, and to render the same available for cultivation. 32 V. c. 28, s. 32.

Power to make contracts.

**54.** Where it has been ascertained, on the report of a competent engineer, that there exists, or is being or has been con-

Power to remove obstructions on re-

port of engineer.

constructed, across any river, stream or water-course, any mill-dam, embankment or obstruction which does, or which, in the opinion of such engineer, will impede the free discharge of water from any such swamp, bog or flooded land as aforesaid, the Commissioner shall have power to stop the construction thereof, or to cause the same to be removed, or a slide constructed, as in his opinion may be most advisable; and if it be found that the owner of any such mill-dam, embankment or obstruction, or any other person suffers any damage in consequence of the stoppage of its construction, or of its removal, or of the construction of any slide under the provisions of this section, such owner or person suffering such damage shall receive compensation (if on arbitration, as hereinafter provided, he be considered reasonably entitled to any) for such damage, to be agreed upon, or appraised and awarded in manner hereinafter provided, due regard being paid to the previous rightful or wrongful action of the owner in constructing such mill-dam or embankment: and such compensation shall be paid within six months after the same has been agreed on or awarded. 32 V. c. 28, s. 33.

Owners, etc. to receive compensation.

Slides to be under control of Department, etc.

**55.** Where any such slide as aforesaid has been constructed in any mill-dam or embankment, such slide shall be under the control of the Department; and the Commissioner, his engineers and agents, shall have free access to the same at all reasonable times, and for all reasonable purposes, including the regulating the discharge of water over, and the repairing of the same. 32 V. c. 28, s. 34.

Power to appoint overseers of drainage works.

**56.** When the works for the drainage or saving from flooding of any land have been reported complete, the Commissioner shall, if necessary, appoint a competent overseer or overseers to take charge of the same, whose duty it shall be to report, from time to time and as occasion may require, on the condition of the same, and to state what repairs are required to keep them in good order. 32 V. c. 28, s. 35.

Expenditure to be sanctioned by Legislature, etc.

**57.** Nothing herein contained shall give authority to the Commissioner to cause expenditure not previously sanctioned by the Legislature, except for such repairs and alterations as the immediate necessities of the public service may demand. 32 V. c. 28, s. 40.

#### OFFICIAL ARBITRATORS.

Official Arbitrators, how appointed and for what purpose, etc.

**58.** The Lieutenant-Governor may, from time to time, constitute a Board of Arbitration, and appoint any number of persons, not exceeding three, who shall be Official Arbitrators for Ontario, and who shall arbitrate on, appraise, determine and award the sum which shall be paid to any person in respect of any claim made by such person under this Act, and with whom the Commissioner has not agreed and cannot agree; and every such Arbitrator shall receive such remuneration as may be

from time to time fixed by the Lieutenant-Governor. 32 V. c. 28, s. 41.

**59.** The Arbitrators shall take, before the Commissioner or Their oath of one of Her Majesty's Justices of the Peace for Ontario, the following oath :—

"I, A. B., do swear that I will well and truly hear, try and examine into such claims as may be submitted to me for compensation for real or personal property taken, or alleged direct or consequent damage to such property arising from the construction, or connected with the execution, of any Public Work undertaken at the expense of the Province of Ontario, or arising out of or connected with the execution of, or on account of deductions made for the non-execution or non-fulfilment of any contract for the execution of any such Public Work ; that I will give a true judgment and just award thereon to the best of my knowledge and ability ; and that I will take into due consideration the benefits derived and to be derived by the claimant through the construction of such Public Work, as well as the injury done thereby : So help me God."

32 V. c. 28, s. 42.

**60.** The Lieutenant-Governor may appoint proper persons Clerks to to act as clerks to the said Arbitrators, and may fix the arbitrators. amount of remuneration to be allowed to any such clerk. 32 V. c. 28, s. 43.

**61.** Whenever any Arbitrator has concluded any such arbitration by the publication of his award thereon, he shall forthwith cause to be transmitted to the Secretary of the Department such award, together with all depositions, documents, maps, plans, books, accounts, contracts and writings, not being private property, taken by or submitted to such Arbitrator in the course of such arbitration ; and the Secretary shall file the same as public records of the Department. 32 V. c. 28, s. 44. Arbitrators to transmit award, &c., to Secretary.

#### WHAT CASES MAY BE REFERRED TO ARBITRATION.

**62.** If any person has any claim for real or personal property taken, or for alleged direct or consequent damage to such property, arising from the construction or connected with the execution of any Public Work undertaken at the expense of the Province, or any claim arising out of, or connected with, the execution or fulfilment, or on account of deductions made for the non-execution or non-fulfilment, of any contract for the execution of any such Public Work made and entered into with the Commissioner, either in the name of Her Majesty, or in any other manner whatsoever, such person may give notice in writing of such claim to the Commissioner, stating the particulars thereof, and how the same has arisen ; and thereupon the Commissioner may, at any time within thirty days after such notice, tender what he considers a just satisfaction for the same, with notice that unless the sum so tendered is accepted in ten days after such tender, the said claim will be submitted to arbitration. 32 V. c. 28, s. 45. How and in what cases claims are to be made.



Security for  
costs by  
claimant.

**63.** Before any claim under this Act is arbitrated upon, the claimant shall give security to the satisfaction of the Arbitrators, or any one of them, for the payment of the costs and expenses incurred by the arbitration, in the event of the said claimant being awarded to pay such costs. 32 V. c. 28, s. 46.

When no  
arbitration  
allowed.

**64.** No person shall be entitled to an arbitration, where by the terms of the contract it is provided that the determination of any matters of difference arising out of or connected with the same shall be decided by the Commissioner, Architect or Engineer, or other officer of the Department. 37 V. c. 26, s. 1.

Limitation of  
time within  
which claims  
must be made.

**65.** No claim of any kind for compensation in respect of any contract made, or for any loss or damage occasioned by anything done under this Act, by or under the authority of the Department or the Commissioner, shall be submitted to or entertained by any Arbitrator, unless such claim and the particulars thereof have been filed with the Secretary of the Department within six months next after the loss or injury complained of, or after the date of the final estimate made under such contract. 32 V. c. 28, s. 48.

#### POWERS OF ARBITRATORS AND PROCEEDINGS BY OR BEFORE THEM.

Power to  
summon wit-  
nesses, &c.

**66.** The Arbitrators may, by summons or order in writing, signed by any one of them, to be served upon, or left at the last usual place of residence of the person to whom it is addressed, command the attendance, from any part of the Province, of any witness, or the production of any documents required by any of the parties, and may swear the said witness to testify truly respecting the matters on which he is to be interrogated; and the disobedience of such summons or order shall subject the person disobeying to a penalty of not less than five dollars, nor more than twenty-five dollars, to be recovered before any Justice of the Peace, and levied under the warrant of such Justice, by distress and sale of the goods and chattels of the offender, unless such person establishes reasonable cause for such disobedience. 32 V. c. 28, s. 49.

Penalty for  
non-atten-  
dance

What evi-  
dence, etc.,  
disallowed.

**67.** No person shall be compelled to give any evidence, or to produce any document, which he would not be compelled to give or produce at a trial in any Superior Court of the Province, or to attend as a witness more than three consecutive days; and every witness shall be allowed, in addition to his reasonable travelling expenses, a sum not exceeding one dollar per day, at the discretion of the Arbitrators, such remuneration to be paid by the party requiring his attendance. 32 V. c. 28, s. 50.

Arbitrators to  
consider ad-  
vantages, etc.,

**68.** The Arbitrators shall consider the advantage as well as the disadvantage of any Public Work, as respects the real or personal

property of any person through which the same passes, or to which it is contiguous, or as regards any claim for compensation for damage caused thereby; and the Arbitrators shall, in estimating and awarding the value of any property, real or personal, taken for any Public Work, or the amount of damages to be paid to any person, take into consideration the advantages accrued, or likely to accrue, to such person or his estate, as well as the damage occasioned by reason of such work. 32 V. c. 28, s. 51.

**69.** The Arbitrators, in estimating and awarding the amount to be paid to any claimant for any property, real or personal, taken by the Commissioner under this Act, or for any injury in respect thereof, shall assess the value thereof as if made at the time when such property was so taken or injured, and not as at the time of making their award. 32 V. c. 28, s. 52.

**70.** In awarding upon any claim arising out of any contract in writing, the Arbitrators shall decide in accordance with the stipulations in such contract, and shall not award compensation to any claimant on the ground that he expended a larger sum of money in performance of his contract than the amount stipulated therein; nor shall they award interest on any sum of money which they consider to be due to such claimant, in the absence of any contract in writing stipulating payment of such interest: and any clause in any such contract in which a drawback or penalty is stipulated for the non-performance of any condition thereof, or any neglect to complete any Public Work, or to fulfil any covenant or promise in such contract, shall not be construed as comminatory, but as importing an assessment, by mutual consent, of the damages caused by such non-performance or neglect. 32 V. c. 28, s. 53.

**71.** In the investigation of any claim, the Arbitrators shall cause all legal evidence offered on either side to be taken down and recorded in writing, and shall make and keep a list of all plans, receipts, vouchers, documents and other papers which may be produced before them during such investigation; but they may, with the consent in writing of the Commissioner of the opposite party, take the testimony of the witnesses adduced on either side, orally, and in such case need not reduce it to writing. 32 V. c. 28, s. 54.

**72.** If the sum awarded in any case is greater than the sum tendered, the Commissioner shall pay the costs of the arbitration; but if less, the costs shall be paid by the person who refused the tender; and such costs shall in other cases, where the award is in favour of the claimant, be paid by the Commissioner, in addition to the sum awarded; and where the award is in favour of the Commissioner, shall be paid by the claimant, and shall in all cases be taxed by the proper officer of the Court of Queen's Bench or Common Pleas for Ontario. 32 V. c. 28, s. 55.

## CHAPTER 31.

## An Act respecting Riots near Public Works.

Interpretation, s. 1.	livered up, s. 9.
Lieut.-Governor may declare Act to be in force, s. 2.	Sale of forfeited weapons, s. 10.
Delivery up of weapons where the Act is in force, ss. 3-6.	Recovery of penalties. s. 11.
Penalty for non-delivery, s. 7.	Limitation of actions against Justices, &c., for things done pursuant to this Act, s. 12.
Search for weapons may be made, s. 8.	Mounted Police Force to carry Act into effect, ss. 13-15.
Persons carrying weapons may be arrested, C. S. C. c. 29, s. 8.	Expenses of carrying Act into execution, how defrayed, ss. 16, 17.
Monthly returns of weapons de-	

Preamble.

FOR the preservation of the peace and for the protection of the lives, persons and property of Her Majesty's subjects, in the neighbourhood of Public Works on which large bodies of labourers are congregated and employed: Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

## INTERPRETATION.

Interpretation of term "weapon."

1. In this Act, the term "weapon" shall include every species of weapon, arms or ammunition enumerated in the third section of this Act. C. S. C. c. 29, s. 18.

## WHEN AND WHERE THIS ACT SHALL BE IN FORCE.

Lieut.-Governor in Council may by proclamation declare this Act to be in force in any locality in which Public Works are being carried on.

2. The Lieutenant-Governor in Council may, as often as occasion requires, declare by proclamation the several places in this Province within the limits whereof any canal or other Public Dominion or Provincial work, or any canal, railway or other work undertaken or carried on by any incorporated Company is in progress of construction, or such places as are in the vicinity of any such canal, railway or other work as aforesaid, within which he deems it necessary that this Act should be in force—and this Act shall, upon and after the day to be named in any such proclamation, take effect within the places designated in such proclamation.

And may, in like manner, declare this Act to be no longer in force in any such locality.

2. The Lieutenant-Governor in Council may, in like manner, from time to time, declare this Act to be no longer in force in any of such places; but this shall not prevent the Lieutenant-Governor in Council from again declaring the same to be in force in any such place or places.

3. But no such proclamation shall have effect within the limits of any City. C. S. C. c. 29, s. 1.

Proviso: not to apply to cities.

3. Upon and after the day to be fixed in such proclamation, no person employed in or upon any such canal, railway or other work as aforesaid, within the limits specified in such proclamation, shall keep or have in his possession or under his care or control, within such limits, any gun, blunderbuss, pistol or other fire-arm, or any stock, lock, barrel or any other part of such gun, blunderbuss, pistol or other fire-arm, or any bullets, sword, sword-blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger or other instrument intended for cutting or stabbing, or other arms, ammunition or weapon of war, under a penalty of not less than two dollars nor more than four dollars for every such weapon found in his possession. C. S. C. c. 29, s. 2.

While this Act is in force in any locality, no person there resident shall have any arms or weapons of war.

4. Within the time appointed as aforesaid in such proclamation, every person employed in or upon the canal, railway or other work to which the same relates, shall bring and deliver up to some Justice of the Peace or Commissioner to be appointed by the Lieutenant-Governor for the purposes of this Act every such weapon in his possession, and shall obtain from such Justice of the Peace or Commissioner a receipt for the same. C. S. C. c. 29, s. 3.

Weapons to be delivered to a Justice and receipt given for the same.

5. When this Act ceases to be in force within the place where any weapon has been delivered and detained in pursuance thereof, or when the owner or person lawfully entitled to any such weapon satisfies the Justice or Commissioner that he is about to remove immediately from the limits within which this Act is at the time in force, the Justice or Commissioner may deliver up to the owner or person authorized to receive the same, any such weapon, on production of the receipt so given for it. C. S. C. c. 29, s. 4.

Weapons so detained to be returned when this Act ceases to be in force.

6. Every such weapon found in the possession of any person employed as aforesaid after the day named in any proclamation as that on or before which such weapon ought to be delivered up, and within the limits or locality set forth in the proclamation bringing this Act into force, shall be liable to be seized: and being seized by any Justice, Commissioner, constable or other peace officer, shall be forfeited to the use of Her Majesty. C. S. C. c. 29, s. 5.

Weapons unlawfully kept may be seized and shall be forfeited.

7. If any person, for the purpose of defeating this Act, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed, within the limits within which this Act is at the time in force, any such weapon as aforesaid belonging to or in the custody of any person employed on any such canal, railway or other work, such person shall forfeit a sum of not less than forty dollars nor more than one hundred dollars; one

Penalty on persons in the limits in which this Act is in force, keeping arms contrary to it.



half to belong to the informer, and the other half to Her Majesty. C. S. C. c. 29, s. 6.

On a sufficient affidavit, any Justice of the Peace may authorize a search for and seizure of unlicensed arms where this Act is in force.

8. Any Justice of the Peace or any Commissioner appointed under this Act, having authority within the place where this Act is at the time in force, upon the oath of a credible witness that he believes that any such weapon as aforesaid is in the possession of any person, contrary to the provisions of this Act, or in any house or place, may issue his warrant to any constable or peace officer to search for and seize the same and he or any person in his aid, may search for and seize the same in the possession of any person, or in any such house or place.

Forcible entry in case admission be refused to the officer.

Weapons, &c., seized to be forfeited unless proved to have been lawfully kept.

2. In case admission to any such house or place cannot be obtained after demand, such constable or peace officer, and person in his aid, may enter the same by force, by day or by night, and seize such weapon; and unless the party within whose possession or in whose house or place the same has been found, within four days next after the seizure, proves to the satisfaction of such Justice or Commissioner that the weapon so seized was not in his possession or in his house or place contrary to the meaning of this Act, such weapon shall be forfeited to the use of Her Majesty. C. S. C. c. 29, s. 7.

[Section 8 of C. S. C. c. 29, is as follows:—

Persons carrying weapons in places where this Act is in force under circumstances of suspicion, may be arrested.

Such persons may be committed for trial for a misdemeanor.

Commissioners, etc., to make monthly returns.

Weapons forfeited to be sold.

Proceeds how applied.

8. Any Justice or Commissioner, constable or peace officer, or any person acting under a Justice's or Commissioner's warrant, or in aid of any Justice, Commissioner, constable or peace officer, may arrest or detain any person employed on any such canal, railway or other work found carrying any such weapon as aforesaid, within the limits or locality within which this Act is at the time in force, at such time and in such manner as in the judgment of such Justice, Commissioner, constable or peace officer, or person acting under a warrant, affords just cause of suspicion that they are carried for purposes dangerous to the public peace; and the act of so carrying any such weapon by any person so employed, shall be a misdemeanor, and the Justice or Commissioner arresting such person or before whom he is brought under such warrant, may commit him for trial for a misdemeanor unless he gives sufficient bail for his appearance at the next Assizes, or General Quarter Sessions of the Peace, to answer to any indictment to be then preferred against him. 8 V. c. 6, s. 8.]

9. Every such Justice or Commissioner shall make a monthly return to the Secretary of the Province of all weapons delivered to him, and by him detained under this Act. C. S. C. c. 29, s. 9.

10. All weapons declared forfeited under this Act shall be sold under the direction of the Justice or Commissioner by whom or by whose authority the same were seized, and the proceeds of such sale, after deducting necessary expenses, shall be received by such Justice or Commissioner and paid over by him to the Provincial Treasurer for the use of the Province. C. S. C. c. 29, s. 10.

**11.** All penalties imposed by this Act may be recovered before any two Justices of the Peace acting for the District or County within which the fact in respect of which such penalty is sought to be recovered, happened or was committed;—and such Justices shall, on complaint on oath of such offence, issue their warrant for bringing the offender before them, and shall, on the offender being brought before them, hear the complaint and adjudge upon the same; and if the offender is convicted on the oath of one witness other than the informer, or by his own confession, the Justices shall impose such penalty. C. S. C. c. 29, s. 12.

Before whom penalties imposed by this Act may be recovered, and on what evidence.

**12.** Any action brought against any Justice or Commissioner, constable, peace officer, or other person, for anything done in pursuance of this Act, must be commenced within six months next after the fact;—and the venue shall be laid or the action instituted in the District or County where the fact was committed; and the defendant may plead the general issue and give this Act and the special matter in evidence; And if such action is brought after the time limited, or the venue is laid or the action brought in any other District or County than as above declared, the verdict shall be given for the defendant: and in such case, or if the verdict is given for the defendant on the merits, or if the plaintiff becomes nonsuited or discontinues after appearance is entered, or has judgment rendered against him on demurrer, the defendant shall be entitled to recover double costs. C. S. C. c. 29, s. 11.

Time for action for anything done under this Act limited, etc.

Venue, etc.

Defendant, if successful, to have double costs.

#### MOUNTED POLICE FORCE.

**13.** For the better carrying this Act into effect, the Lieutenant-Governor in Council may cause a body of men not exceeding one hundred, inclusive of officers, and to be called “The Mounted Police Force,” to be raised, mounted, armed and equipped, and to be placed under the command of such officers as the Lieutenant-Governor in Council deems necessary, and may cause such Police Force, or any portion thereof, to be employed in any place in which this Act is then in force, under such Orders and Regulations as the Lieutenant-Governor in Council shall from time to time issue. C. S. C. c. 29, s. 13.

A Mounted Police Force may be raised and employed for better carrying this Act into effect.

**14.** The Lieutenant-Governor may appoint the chief officers and such of the subordinate officers of the said Mounted Police Force, and such other persons as he deems necessary, to be respectively Justices of the Peace for the purposes of this Act within any of the places in which this Act is in force; and such officers and persons respectively may act as Justices of the Peace, although they may not have the qualification in property required of others. C. S. C. c. 29, s. 14.

Officers of Police Force and others may be appointed Justices of the Peace for certain localities without a property qualification.

[The following Proviso is added in C. S. C. c. 29, s. 14.

\*

Committal by Justices to gaols out of limits of such localities.

Provided that in so far as regards the detention, conveyance to gaol and imprisonment of any person committed by any Justice of the Peace appointed under this Act, his order and commitment shall be valid and shall be executed, although the Common Gaol to which the prisoner is committed be out of the limits of any place within which this Act has been proclaimed to be in force. 8 V. c. 6, s. 14.]

Mounted Policemen to be Constables and Peace Officers.

**15.** The men in such Mounted Police Force are hereby constituted respectively constables and peace officers for the purposes of this Act, for the District or County in which they are employed for the time being. C. S. C. c. 29, s. 15.

#### EXPENSES UNDER THIS ACT.

Expenses of carrying this Act into effect how defrayed, in the case of Public Works.

**16.** The expenses of carrying this Act into effect upon or near Provincial Public Works shall be paid through the Commissioner of Public Works out of the moneys appropriated for the work on which such expenses are incurred, and shall be charged as part of the cost of such work; and the sum to be so charged against each work shall be proportionate to the number of policemen employed on such work and the time during which they are so employed; but the sum so expended in any one year shall not exceed forty thousand dollars. C. S. C. c. 29, s. 16.

How the expenses defrayed in case of works carried on by companies.

**17.** The expenses attending the employment of any such police force in any place in or in the vicinity whereof any railway, canal or work, undertaken and carried on by any such incorporated Company as aforesaid, is in progress of construction, shall be, in the first instance, paid by the Lieutenant-Governor out of the Consolidated Revenue Fund, and shall, on demand, be repaid to the Provincial Treasurer by such incorporated Company, or, if not so repaid, may be recovered from such Company as a debt due to the Crown; and when recovered, shall form part of the Consolidated Revenue Fund. C. S. C. c. 29, s. 17.

## CHAPTER 32.

## An Act respecting the Sale of Intoxicating Liquors near Public Works.

---

Sale of liquors near public works prohibited, s. 1.	liquor, ss. 7, 8.
Penalties for contravention of the Act, s. 2.	Payment for liquors illegally sold to be void, s. 9.
Agents punishable as principals, s. 3.	Witnesses in cases under this Act, s. 10.
Persons who may decide cases under this Act, s. 4.	Provision for protection of Justices, s. 11.
Appeals, s. 5.	Costs, ss. 12, 13.
Search for liquors and seizure authorized, s. 6.	Proceedings not to be void for defect of form, s. 14.
Proceedings against keepers of	

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. No person shall barter, sell, exchange or dispose of, directly or indirectly, to any other person, any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor a part of which is spirituous, or vinous, fermented or otherwise intoxicating; (and every such liquor or mixed liquor shall be included in the expression "intoxicating liquor," when used in this Act); nor shall expose, keep or have in his possession, for sale, barter or exchange, any intoxicating liquor, at any place not included within the limits of any City incorporated or other Town or Village, and being within three miles of the line of any railway, canal, or other Public Work in progress of construction, whether such work be constructed by the Government of Canada or of this Province, or by any incorporated Company, or by private enterprise:—Nor shall any person obtain or receive a license to sell any intoxicating liquor at any such place as aforesaid, and any such license if granted shall be null.

Intoxicating liquors not to be sold within a certain distance of any public work in progress of construction.

No license to be granted in such place.

2. If any doubt at any time arises as to whether any work then in progress does or does not come within the meaning of this section, the Lieutenant-Governor, if he sees fit, may declare by proclamation that such work is within the meaning of this section, and that the prohibition herein contained applies to any place within three miles of the line thereof, which line may be described and defined in such proclamation; and the declaration contained in such proclamation shall have the like

Lieutenant-Governor may declare any work within the scope of this Act.



force as if contained in this Act, and the said prohibition shall apply accordingly.

Effect of such declaration.

3. Nothing in such declaration shall be construed as a declaration that such work or any part thereof was not within the meaning of this section before the issuing of such proclamation, but the question whether it was or was not so shall be decided as if such proclamation had not issued.

Proviso: not to apply to distillers, brewers, &c.

4. This section shall not extend to any person selling intoxicating liquors by wholesale, and not retailing the same, if such person be a licensed distiller or brewer, nor shall it prevent the renewal of the license of any houses or shops which had been usually licensed before the construction of such Public Work was commenced. C. S. C. c. 30, s. 1.

Penalty for contravention of this Act, and how recoverable. &c.

2. Any person who, in contravention of this Act, by himself, his clerk, servant or agent, exposes or keeps for sale, or barter, sells, disposes of, gives or exchanges for any other matter or thing, to any other person, any intoxicating liquor, shall be liable to a fine of twenty dollars on the first conviction, forty dollars on the second, and on the third and every subsequent conviction to such last mentioned fine and imprisonment for a period not more than six months.

How applied.

2. Such fine shall be paid over to the Treasurer or Clerk of the Municipality in which the offence is proved to have been committed, for the use of the Municipality, and shall be applied to such public purposes as the Council thereof may direct.

Imprisonment in default of payment.

3. In default of payment of any fine and costs imposed under this Act, with the costs of prosecution, at the time of conviction, the offender shall be imprisoned until the same is paid, under warrant of the Justice, Reeve, Mayor, Police Magistrate or Judge before whom the conviction is had; but no person shall be imprisoned for any separate offence under this Act for fine or costs, or for both fine and costs, for a period exceeding six months. C. S. C. c. 30, s. 2.

Agents punishable as principals.

3. If any clerk, servant or agent, or other person, in the employment or on the premises of another, sells, disposes of or exchanges for any other matter or thing, or assists in selling, disposing of, or exchanging for any other matter or thing, any intoxicating liquor, in contravention of this Act, for the person in whose service or on whose premises he is, he shall be held equally guilty with the principal, and shall suffer the like penalty. C. S. C. c. 30, s. 3.

Who may hear and decide cases under this Act.

4. Any Justice of the Peace, any Reeve or Mayor of a Township, Village or other Municipality, any Police Magistrate or any Judge of a Division Court shall hear and determine in a summary manner any case arising within his jurisdiction under

this Act; and every person making complaint against any other person for contravening this Act, or any part or portion thereof, before such Justice, Reeve, Mayor, Police Magistrate or Judge, may be admitted as a witness; and if the Justice, Reeve, Mayor, Police Magistrate, or Judge before whom the examination or trial is had so orders, as he may if he thinks there was probable cause for the prosecution, the defendant shall not recover costs though the prosecution fails. C. S. C. c. 30, s. 4.

5. No appeal shall be allowed to any person complained of or convicted under this Act, unless, within three days after conviction or order made or judgment rendered, he enters into a recognizance or bond to the Municipality in which the offence is alleged to have been committed, in the sum of one hundred dollars, jointly and severally with two good and sufficient sureties, to prosecute his appeal, and to pay all costs, fines and penalties to be awarded against him upon the final determination of the case.

On what conditions only an appeal shall be allowed.

2. No recognizance or bond shall be taken except by the Justice, Reeve, Police Magistrate or Judge before whom the complaint was made or the offender tried, and the security shall be to his satisfaction; and if the appeal is not successful, the recognizance or bond shall be forfeited, and the amount thereof shall become a debt due to the Municipality within which the offence was committed, recoverable by action by and in the name of the Municipality, and it shall be the duty of the Clerk or Treasurer of such Municipality to prosecute the same, and the money shall be applied in the same manner as the fines hereinbefore mentioned. C. S. C. c. 30, s. 5.

By whom the recognizance in appeal shall be taken, &c.

6. If any three persons being voters or entitled to vote at any municipal election of the Municipality within which the complaint is made, make oath or affirmation before any Justice, Reeve, Mayor, Police Magistrate, or Judge of a Division Court, that they have reason to believe and do believe that any intoxicating liquor intended for sale or barter in contravention of this Act, is kept or deposited in any steamboat or other vessel, or in any carriage or vehicle, or in any store, shop, warehouse, or other building or place in such Municipality, or on any river, lake or water adjoining the same, at any place within which such intoxicating liquor is by this Act prohibited to be sold or bartered or kept for sale or barter,—the said Justice, Mayor, Reeve, Police Magistrate or Judge shall issue his warrant of search to any Sheriff, police officer, bailiff or constable, who shall forthwith proceed to search the premises, steamboat, vessel or place described in such warrant, and if any intoxicating liquor be found therein, he shall seize the same, and the barrels, casks or other packages in which it is contained, and convey them to some proper place of security, and there keep them until final action is had thereon;—But no dwelling house in which, or in part of which a shop or bar is not kept, shall be

Search for liquors allowed in certain cases.

Seizure if found.

Dwelling house not to be

searched except in certain cases.

searched, unless one at least of the said complainants testifies on oath to some act of sale of intoxicating liquor therein or therefrom, in contravention of this Act, within one month from the time of making the said complaint. C. S. C. c. 30, s. 6.

Owners of liquor found to be summoned.

7. The owner or keeper of the liquor seized as aforesaid, if he is known to the officer seizing the same, shall be summoned forthwith before the Justice or person by whose warrant the liquor was seized, and if he fails to appear, and it appears to the satisfaction of the said Justice or person who issued the warrant, that the said liquor was kept or intended for sale or barter, in contravention of this Act, it shall be declared forfeited, with any package in which it is contained, and shall be destroyed by authority of the written order to that effect of the said Justice, Reeve, Mayor, Police Magistrate or Judge, and in his presence, or in the presence of some person appointed by him to witness the destruction thereof, who shall join with the officer by whom the said liquor has been destroyed, in attesting that fact upon the back of the order by authority of which it was done; And the owner or keeper of such liquor shall pay a fine of forty dollars and costs, or, in default thereof, be committed to prison for three months. C. S. C. c. 30, s. 6. (2).

Destruction of liquors found to be illegally kept.

Fine.

Proceedings if the owner is unknown, &c.

8. If the owner, keeper or possessor of liquor seized under the provisions of this Act is unknown to the officer seizing the same, it shall not be condemned and destroyed until the fact of such seizure has been advertised, with the number and description of the package as near as may be, for two weeks, by posting up a written or printed notice and description thereof in at least three public places. C. S. C. c. 30, s. 7.

If not intended for sale, &c.

2. If it is proved within such two weeks to the satisfaction of the Justice, Reeve, Mayor, Police Magistrate or Judge by whose authority such liquor was seized, that it was not intended for sale or barter, in contravention of this Act, it shall not be destroyed, but shall be delivered to the owner, who shall give his receipt therefor upon the back of the warrant, which shall be returned to the said Justice or person who issued the same; but if, after such advertisement as aforesaid, it appears to such Justice, Reeve, Mayor, Police Magistrate or Judge, that such liquor was intended for sale or barter, in contravention of this Act, then such liquor, with any package in which it is contained, shall be forfeited, condemned and destroyed. C. S. C. c. 30, s. 7(2.)

Forfeiture and destruction of liquors intended for sale.

Payments for liquor illegally sold, &c., in contravention of this Act, to be void.

9. Any payment or compensation for liquor sold or bartered in contravention of this Act, whether in money or securities for money, labour or property of any kind, shall be held to have been received without consideration, and against law, equity and good conscience, and the amount or value thereof may be

recovered from the receiver by the party making, paying or furnishing the same; and all sales, transfers, conveyances, liens and securities of every kind which either in whole or in part have been given for or on account of intoxicating liquor sold or bartered in contravention of this Act, shall be null against all persons, and no right shall be acquired thereby, and no action of any kind shall be maintained, either in whole or in part, for or on account of intoxicating liquor sold or bartered in contravention of this Act. C. S. C. c. 30, s. 8.

**10.** Any Justice of the Peace, Reeve, Police Magistrate or Judge, authorized to hear and determine offences against this Act, may summon any person represented to him as a material witness in relation to any offence against this Act; and if such person refuses or neglects to attend, pursuant to such summons, the Justice or person authorized to try the offence may issue his warrant for the arrest of the person so summoned, and such person shall be brought before the Justice or person issuing the warrant, and if he refuses to be sworn, or to affirm, or to answer any question touching the matter under investigation, he may be committed to the Common Gaol, there to remain until he consents to be sworn or to affirm and answer. C. S. C. c. 30, s. 9.

Witnesses may be compelled to appear in certain cases under this Act.

**11.** All the provisions of any law for the protection of Justices of the Peace, when acting as such, or to facilitate proceedings by or before them, in matters relating to summary convictions and orders, shall, in so far as they are not inconsistent with this Act, apply to every functionary empowered to try offenders against this Act, and such functionary shall be deemed a Justice of the Peace within the meaning of any such law, whether he be or be not a Justice of the Peace for other purposes. C. S. C. c. 30, s. 9. (2).

Provisions of Acts for protection of Justices extended to cases under this Act.

**12.** Wherever judgment is rendered for costs, there shall be included therein fees for such prospective services as are necessary to enforce such judgment. C. S. C. c. 30, s. 10.

Costs of enforcing judgment to be included.

**13.** Upon judgment or affirmance of any appeal, and for any other proceeding under this Act had before a Justice, Reeve or other functionary, the costs shall be the same as are now by law allowed for proceedings of a like nature;—And in actions and proceedings in any higher Court, the costs shall be the same as are usually allowed in such Court. C. S. C. c. 30, s. 11.

Costs under this Act.

**14.** No action or other proceeding, warrant, judgment, order, or other instrument or writing, authorized by this Act, or necessary to carry out its provisions, shall be held void, or be allowed to fail for defect of form. C. S. C. c. 30, s. 12.

Actions and proceedings not to be void for want of form.



## 4. *Drainage Works.*

CHAP. 33.—Expenditure of Public Money in Drainage Works, p. 326.

34.—Investment of Public Money in Debentures issued for the construction of Drainage Works by Municipalities, p. 339.

### CHAPTER 33.

#### An Act respecting the Expenditure of Public Money for Drainage Works.

Short title, s. 1.	Grubbing and spreading earth, ss. 32, 33.
Expenditure for drainage works authorized, ss. 2, 3.	Assessment roll to be deposited with Commissioner of Public Works, and in Registry Office, s. 34.
When Commissioner may undertake drainage works, ss. 4, 5.	Assessments to form a rent charge on land, s. 36.
At request of a municipal Council, s. 4.	Collection of Assessments and remittance to the Provincial Treasurer, ss. 35-40.
On application by majority of owners, s. 5.	How land may be discharged from the rent charge, ss. 41-45.
When works may be extended into an adjoining municipality, s. 6.	Increased rent to be paid by tenants of improved lands to be determined by assessors, s. 46.
Assessment of lands benefited to defray expense, ss. 7-13.	Where rent charge is upon Crown lands, s. 47.
Complaints and Appeals from Assessment, ss. 14-19.	Disputes as to boundaries to be settled by Assessors, s. 48.
When lands in adjoining municipality may be charged though works not carried into it, s. 21.	Disputes between municipalities, &c., as to damages, to be referred to arbitration, s. 49.
Assessment of lands of adjoining municipality, ss. 21-24.	Assessment where two or more municipalities have applied for drainage, s. 50.
Arbitration in case of objection to the Assessment, s. 25-29.	
Repair and maintenance of works after completion, s. 30.	
Adjoining municipality using a drain may be assessed for construction and maintenance, s. 31.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title,

1. This Act may be cited as "*The Ontario Drainage Act.*"

**2.** The Treasurer of the Province may, with the authority of the Lieutenant-Governor in Council, advance out of the public moneys of the Province any sum or sums of money, so that the same, with what has been already expended under "*The Ontario Drainage Act of 1873*," do not exceed in the whole the sum of two hundred thousand dollars, to be expended in Drainage Works, to be executed under the provisions of *The Act respecting the Public Works of Ontario*, and of this Act. 36 V. c. 38, s. 1.

Expenditure authorized.

36 V. c. 38.

Rev. Stat. c. 30.

**3.** The Commissioner of Public Works shall cause a separate account to be opened in the books of his Department, in which shall be regularly entered a true and exact statement of all sums of money received, paid and expended about any drainage or improvement by means of drainage, embankment, culverts, or other work in connection with drainage, made under the provisions of the aforesaid Act, and of the several articles, matters or things for which any sum of money has been so disbursed and paid. 36 V. c. 38, s. 2.

Separate account of expenditure for drainage works to be kept.

**4.** The Commissioner of Public Works may, on the written application of the Council of any Municipality asking for drainage works within such Municipality, or along any town line of such Municipality, undertake and complete the same. 36 V. c. 38, s. 3.

Commissioner of Public Works may undertake drainage on request of municipality,

**5.** The Commissioner of Public Works, on the petition of a majority of all the owners, or on the petition of a majority of the owners as shown by the last revised assessment roll to be resident on the property described in the petition, and the whole or a portion of which is to be benefited by the drainage, may undertake and complete the same, as if the Council had applied for the drainage. 36 V. c. 38, s. 4.

or on petition of resident property holders.

**6.** Wherever it is necessary to continue the drainage works beyond the limits of any Municipality, the engineer employed by the Commissioner of Public Works may continue the survey and levels into the adjoining Municipality, until he finds fall enough to carry the water beyond the limits of the Municipality in which the drainage was commenced, and the Commissioner may undertake and complete the same as if such adjoining Municipality or inhabitants thereof had petitioned for the same. 36 V. c. 38, s. 6.

When work may be extended into other municipalities.

**7.** The Commissioner of Public Works shall notify the Council of any Municipality in which, or along any town line of which drainage works have been executed under the foregoing provisions, requesting them to appoint three Assessors, who shall assess all lands and roads benefited by such drainage. 36 V. c. 38, s. 7.

Appointment by Council of assessors of the benefit of drainage.

**8.** If the Council so notified fails to appoint such Assessors within one month after such notification by the Com-

How assessment may be made on failure

of Council to  
appoint assess-  
sors.

missioner of Public Works, then the Official Arbitrators, or such other persons as the Commissioner of Public Works may appoint, shall make the assessment in the same manner and under the formalities hereafter laid down for the guidance of the Assessors. 36 V. c. 38, s. 8.

Oath of asses-  
sors before  
assessing.

9. The Assessors shall, before proceeding to make the assessment, take and subscribe the following oath (or, in case of those who affirm, make and subscribe the following affirmation) before any Justice of the Peace: which oath or affirmation shall be deposited with the assessment roll as provided in section thirteen:

I, A. B., do swear (or affirm) that I will to the best of my ability and knowledge make a true and honest assessment of the lands drained or benefited by such drainage in proportion to the benefit derived by each road, lot, or part of lot thereby: So help me God" (or in case of affirmation "All which I do solemnly affirm").

36 V. c. 38, s. 9.

Commissioner  
to give certain  
information to  
the Assessors.

10. As soon as conveniently may be after any works for the drainage or improvement of any land, authorized to be executed under *The Act respecting the Public Works of Ontario*, have been completed, the said Commissioner shall furnish the Assessors with a map of the Municipality, with the drain or drains marked upon it, and assessment rolls such as are used for ordinary assessments, and a statement of the sums which have been expended in and about the works so executed, including all expenses incident thereto, and interest upon all payments, but not including expenses of preliminary surveys, together with all such maps, plans, sections and other documents or information as may seem necessary. 36 V. c. 38, s. 14.

Rev. Stat.  
c. 30.

How and when  
assessments to  
be made.

11. Upon receiving the plans, maps and other documents as aforesaid, the said Assessors shall visit and inspect the lands, and shall assess them, setting opposite each parcel of land the proportion of the total amount of the sums which have been expended, as aforesaid, which ought to be payable in respect of the several parcels or lots of the land or road so drained or improved. 36 V. c. 38, s. 15.

Assessment of  
lands.

12. The Assessors shall assess all lands and roads benefited by drainage undertaken under the formalities prescribed in the fifth section, as if the same had been undertaken on the application of the Municipality. 36 V. c. 38, s. 5.

Assessors to  
deposit copy of  
their assess-  
ment with  
Clerk of Muni-  
cipality.

13. The Assessors shall, forthwith after they have completed the assessment, deposit an attested copy of their assessment roll with the Clerk of the Municipality which, or the inhabitants of which, applied for the drainage. 36 V. c. 38, s. 10.

**14.** The assessment shall be subject, in every case of complaint by the owner or person interested in any property assessed, whether of overcharge, or of undercharge of any other property assessed, or that property which should be assessed has been wrongfully omitted to be assessed, to an appeal to the Court of Revision of the Municipality in which the lands or roads benefited by the drainage lie; and the proceedings for trial of such complaints, shall be such as are had upon complaints to the Court of Revision under "*The Assessment Act*." 36 V. c. 38, s. 11; 40 V. c. 8, s. 57.

Appeal from  
assessment.

Rev. Stat. c.  
180, ss. 56-57.

**15.** The Clerk of the Municipality with whom the assessment roll has been deposited shall, within six days after such assessment roll has been so deposited with him, publish the same for four weeks in some paper in the Municipality, or, if no newspaper be published therein, then in some newspaper in the nearest Municipality, together with a notice of the holding of a Court or Courts of Revision, as the case may require. 36 V. c. 38, s. 12; 40 V. c. 8, s. 57.

Clerk of  
Municipality  
to publish the  
assessment.

**16.** The Councils of the Municipalities in which the lands or roads benefited lie shall, from time to time as occasion may require, hold Courts of Revision for the hearing of complaints against such assessment on some day not earlier than twenty nor later than thirty days from the day on which the assessment roll was first published; and such Courts shall be constituted in the same manner and have the same powers as Courts of Revision under "*The Assessment Act*." 36 V. c. 38, s. 12; 40 V. c. 8, s. 57.

Courts of Re-  
vision.

Rev. Stat.  
c. 180, ss. 47-  
55.

**17.** The Clerk with whom the roll is deposited shall transmit to the Court of Revision of each Municipality affected, a certified copy of so much of the said roll as relates to such Municipality. 40 V. c. 8, s. 57.

Reference of  
complaints  
against assess-  
ment.

**18.** In case of appeal from the Court of Revision the same shall be to the Judge, or Junior or acting Judge of the County Court, of the County within which the Municipality is situate; and such Judge and the Clerk of the Municipality and the Clerks of the Division Courts therein respectively shall have the same powers and duties, as nearly as may be, as they have upon appeals from the Court of Revision under "*The Assessment Act*." 36 V. c. 38, s. 12; 40 V. c. 8, s. 57.

Appeal to  
Judge.

Powers, etc.,  
of the Judge  
and Clerk.  
Rev. Stat., c.  
180, ss. 59-65.

**19.** In case, on any such complaint or appeal, the assessment is varied in respect of the property which is the subject of the complaint or appeal, the Court or Judge, as the case may be, shall vary *pro rata* the assessment of the said property and of the other lands and roads benefited as aforesaid, without further notice to the persons interested therein, so that the aggregate amount assessed shall be the same as if there had been no appeal; and the Judge or in case there is no appeal to the Judge,

Variation of  
assessment on  
complaints or  
appeals.



the Court of Revision shall return the roll to the Municipal Clerk from whom it was received, and the Assessors shall prepare and attest a roll in accordance with their original assessment as altered by such revision. 40 V. c. 8, s. 57.

When assessment roll to be published in case lands lie in two municipalities.

**20.** Where lands or roads in an adjoining Municipality, or lying between two Municipalities, are assessed, the assessment roll shall not be published, as hereinbefore provided until the amount to be paid by such adjoining Municipality is determined by arbitration or otherwise, as hereinafter provided. 36 V. c. 38, s. 13.

When lands in an adjoining municipality may be charged, though works not carried into such municipality.

**21.** Where the drainage works do not extend beyond the limits of the Municipality in which they were commenced, but in the opinion of the Assessors benefit lands in an adjoining Municipality, or greatly improve any road lying within any Municipality, or between two or more Municipalities, then the Assessors shall charge the lands so benefited and the Corporation or Company whose road or roads are improved, with such proportion of the costs of the work as they may deem just; and the amount so charged for roads, or agreed upon by the Arbitrators hereinafter referred to, shall be paid out of the general funds of such Municipality or Company. 36 V. c. 38, s. 16.

Report as to which municipality shall maintain drainage works.

**22.** The Assessors shall determine and report to the Council of the Municipality which, or inhabitants of which, asked for the drainage, whether the drainage shall be maintained solely at the expense of such Municipality, or whether it shall be constructed and maintained at the expense of both Municipalities, and in what proportion. 36 V. c. 38, s. 17.

Council of municipality wherein work begun to notify municipality to be benefited.

**23.** The Council of the Municipality which, or certain inhabitants of which, applied for the drainage, shall serve the Head of the Council of the Municipality into which the same is continued, and whose lands or roads are benefited without the drainage being continued, with a copy of the assessment roll aforesaid, so far as it affects such last mentioned Municipality; and unless the same is appealed from, as hereinafter provided, it shall be binding on the Council of such Municipality. 36 V. c. 38, s. 18.

Council of municipality wherein work not begun to raise money.

**24.** The Council of such last mentioned Municipality shall be bound, as if they had petitioned for such drainage, as provided in the fourth section of this Act, to raise such sum as may be named in the assessment roll, or in case of an appeal, for such sum as may be determined by the Arbitrators hereinafter mentioned. 36 V. c. 38, s. 19.

Council of municipality wherein work not begun may

**25.** The Council of the Municipality into which the drainage works have been continued, or whose lands, road or roads are benefited without the drainage works being carried within its

limits, may, within ten days from the day in which the copy of the assessment roll was served on the Head of the Municipality appeal therefrom; in which case they shall serve the Head of, the Corporation from which they received the assessment roll with a written notice of appeal.

appeal; arbitration thereon.

2. Such notice shall state the grounds of appeal, the name of an Arbitrator, and call upon such Corporation to appoint an Arbitrator in the matter on their behalf, within ten days after the service of such notice; and in default thereof it shall be lawful for the Council of the Municipality so appealing to appoint such second Arbitrator, and the two Arbitrators so appointed shall forthwith appoint a third Arbitrator in the matter.

3. In no case shall the Assessors, or any of them, or a member or officer of any Council concerned, be appointed or act as Arbitrator. 36 V. c. 38, s. 20.

26. If, after the Arbitrators have been appointed as aforesaid, they fail or neglect for the space of six days to appoint a third Arbitrator, the Judge of the County Court of the County in which the Municipality appealing is situated, shall, within four days after a request in writing made upon him by either of the two Arbitrators appointed as above, appoint a third Arbitrator. 36 V. c. 38, s. 21.

Appointment of third arbitrator by County Judge.

27. The Arbitrators, before proceeding to try the matter of the arbitration, shall take and subscribe the following oath (or in case of those who affirm, make and subscribe the following affirmation) before any Justice of the Peace; which oath or affirmation shall be filed with the award:—

Oath by arbitrators.

“I, A. B., do swear (or affirm) that I will well and truly try the matter referred to me by the parties, and a true and impartial award make in the premises, according to the evidence and my skill and knowledge: So help me God.” (*Or in case of affirmation, “All of which I do solemnly affirm.”*)

36 V. c. 38, s. 22.

28. The Arbitrators shall, within ten days after the appointment of the third Arbitrator, meet at such place as they may agree upon, and shall then hear and determine the matter in dispute, and make their award, which shall be binding on all parties: and one copy thereof shall be filed with the Clerk of each of the Municipalities interested, one shall be filed with the Registrar of Deeds for the County or Riding in which either of the Municipalities is situate, and one with the Commissioner of Public Works. 36 V. c. 38, s. 23.

Filing.

29. In case of difference between the Arbitrators, the decision of any two of them shall be conclusive. 36 V. c. 38, s. 24.

Decision of majority of arbitrators conclusive.

Repairs and maintenance of work after completion, where works are in more than one municipality.

**30.** It shall be the duty of each Municipality, in the proportion determined by the Assessors or Arbitrators (as the case may be), or until otherwise determined by the Assessors or Arbitrators, under the same formalities, as near as may be, as provided in the preceding sections, to preserve, maintain and keep in repair any drainage works executed under the foregoing provisions within its own limits, either at the expense of the Municipality, or parties more immediately interested, or at the joint expense of such parties and the Municipality, as to the Council, upon the report of the Assessors, when finally passed, may seem just. 36 V. c. 38, s. 25.

Where only in one municipality.

2. In any case wherein, after such drainage works have been fully made and completed, the same have not been continued into any other Municipality than that in which the same were commenced, or wherein the lands or roads of any such other Municipality are not benefited by such drainage works, it shall be the duty of the Municipality making such drainage works, to preserve, maintain, and keep in repair the same at the expense of the lots, parts of lots, and roads, as the case may be, as agreed upon and shown in the assessment roll when finally passed. The Council may from time to time change such assessment roll on the report of an engineer appointed by them to examine and report on such drains and repairs. 36 V. c. 38, s. 25.

Refusal to repair.

3. Any Municipality liable to keep in repair any such drainage works and neglecting or refusing so to do, upon reasonable notice in writing being given by any party interested therein, shall be compelled by *mandamus* to be issued from any Court of competent jurisdiction to make from time to time the necessary repairs to preserve and maintain the same; and shall be liable to pecuniary damage to any person who or whose property is injuriously affected by reason of such neglect or refusal. 36 V. c. 38, s. 25.

Case of a drain being used by another Municipality, &c.

**31.** Should a drain, constructed under the provisions of this Act, be used as an outlet, or otherwise, by any other Municipality, Company, or individual, such Municipality, Company, or individual using the same as an outlet or otherwise may be assessed for the construction and maintenance thereof in such proportion and amount as may be ascertained by the Assessors or Arbitrators, under the formalities provided in the preceding sections. 36 V. c. 38, s. 26.

Ditch along road.

Timber or stumps in the road.

Construction of the road.

**32.** Where a ditch is being constructed along a road allowance, contracts may be made for spreading the earth taken from the ditch on the road; and if the road or any part thereof is timbered, or if stumps are in the way, the timber shall be removed; and not less than twelve feet of the centre of the road shall be grubbed before the earth is spread upon it. 36 V. c. 38, s. 27.

**33.** The removal of the timber, grubbing, and spreading of the earth, together with such portion of the cost of the ditch as the Assessors may deem just and proper, shall be charged to the Municipality and paid out of its general funds. 36 V. c. 38, s. 28.

**34.** The Council of the Municipality which asked for the drainage, or where the drainage was asked for by a majority of the owners resident on the land to be drained or benefited, or by a majority of all the owners, then the Council of such Municipality shall within one month after the assessment roll has been finally settled by the Court of Revision, Judge or Arbitrators (as the case may be), deposit a duplicate of the same with the Commissioner of Public Works, and a duplicate of the same shall also be deposited with the Registrar of the County or Riding in which the said lands are situated, or if they are situated in more Counties or Ridings than one, then with the Registrar of each of such Counties or Ridings, together with a proper map or plan annexed thereto, describing the Township and the several lots or parcels of land, and road or roads to which such assessment roll or award relates; and the Registrar is hereby required to receive the same, and to endorse thereon the date at which it was deposited with him; and such assessment roll, when so finally settled and deposited, shall be binding and conclusive on all parties: and a copy thereof, certified by any such Registrar, shall be evidence that the assessment was duly done. 36 V. c. 38, s. 29.

Deposit of  
duplicates of  
assessment  
roll.

Proof of  
assessment  
roll.

**35.** The Council of every Municipality within which or along any town line of which drainage works have been completed, shall within three months after the assessment roll has been finally settled, pass a by-law, requiring that the amount of money to be collected and charged on the several lots or parcels of land or roads by such Municipality shall be placed on the Collector's roll, from year to year, to be collected and paid over as prescribed in the following sections. 36 V. c. 38, s. 30.

Councils to  
pass by-laws  
to collect  
assessments.

**36.** The respective sums of money which, by the said assessment roll, are specified as the proportions or contributions payable in respect of the roads or several parcels or lots of land so drained, or improved by drainage, or by any works under *The Act respecting the Public Works of Ontario*, towards the total amount of the sums expended on and about such drainage or improvements as aforesaid, shall be charged on such several parcels or lots of land, and that in preference to and with priority over all incumbrances on such land, in manner following, that is to say, each several parcel or lot of land shall be charged with a payment to Her Majesty of a rent-charge after the rate of seven and sixty one-hundredth dollars per centum per annum rent for every one hundred dollars charged on such several parcels or lots, or roads, and so in proportion for every lesser amount,

Assessment to  
be a first  
charge on the  
land,

Rev. Stat., c.  
30.

payable by  
way of rent-  
charge.



to be payable for the term of twenty-two years, to be computed from the first day of January in every year; the first of such payments to be made on the first day of January next after the final settlement or revision of the assessment roll. 36 V. c. 38, s. 31.

Collection of  
rent-charge.

**37.** Every rent-charge which shall have become charged on land by virtue of this Act, shall, except as hereinafter provided, be entered by the Clerk of the Municipality in which the said land is locally situate, in a column of the Collector's roll, to be headed "*Charge under Drainage Act*," and shall be collected and be recoverable by the Council of the said Municipality, by the same means and in the like manner in all respects as municipal rates and taxes are collected and recoverable under "*The Assessment Act*;" and the amount thereof shall be remitted by the local Treasurer to the Treasurer of the Province, within the space of one month after the same has become exigible, with interest at the rate of seven per centum during the non-payment. 36 V. c. 38, s. 32.

Rev. Stat.  
c. 180.

Remittance to  
Provincial  
Treasurer.

Municipal  
Council to  
remit annual  
rent-charge,  
though not  
collected.

**38.** The Council of every such Municipality shall assess and levy on the whole rateable property within its jurisdiction a sufficient sum in each year to enable the local Treasurer, over and above the other valid debts of the Corporation falling due within the year, to pay over to the Treasurer of the Province the amount of such rent-charge, within the space aforesaid, whether the same has been previously recovered from the parties or lands charged with the same or not; and the amount hereby appointed to be remitted by the local Treasurer to the Treasurer of the Province shall be the first charge upon all the funds of the Municipality, for whatever purpose, or under whatever by-law they may have been raised. 36 V. c. 38, s. 32.

Provisions for  
securing pay-  
ment to Pro-  
vincial Treas-  
urer.

Penalty on  
Treasurers,  
Reeve, &c., for  
neglect to see  
that remit-  
tance made.

**39.** No Treasurer or other officer of the Municipality shall pay any sum whatsoever, except for the ordinary current disbursements and salaries of clerks and other employees of such Municipality out of any funds of the Municipality in his hands, until the sum then payable by the municipal Treasurer to the Treasurer of the Province, in respect of such rent-charge has been paid to him; and if any such Treasurer or municipal officer pays any sum out of the funds of his Municipality, except as aforesaid, contrary to the provisions hereinbefore made, in addition to any criminal liability which he may thereby incur, he shall be liable to the Treasurer of the Province for every sum so paid as for money received by him for the Crown; and any Reeve or Councillor wilfully or negligently omitting to see the foregoing provisions carried into effect, shall also be personally and individually liable to the Treasurer of the Province, for the full amount of the said rent-charge, which may be recovered with costs by the said Treasurer of the Province in any suit as for money had and received for Her Majesty's behoof. 36 V. c. 38, s. 32.

**40.** If the assessment roll is not finally revised in time to place the instalment of rent-charge payable for the current year in the Collector's roll, or if for any cause it is left off the roll for that year, then such instalment, with five per cent. added thereto, shall in addition to the instalment for such year be placed in the Collector's roll for the following year. 38 V. c. 25, s. 1. (2.)

The case of assessment roll not being revised, or instalment left off the roll.

**41.** The owner of any parcel or lot assessed for such drainage works may, within one month from the time that the assessment roll has been finally revised, discharge his parcel or lot from the rent-charge by paying to the Treasurer of the Municipality the amount assessed against such parcel or lot; and thereafter, in case all rents placed upon the Collector's roll have been duly paid, may discharge the same by paying to the Treasurer the amount of such assessment less two forty-fifths thereof if one year's rent has been paid, and less four forty-fifths thereof if the rent for two years has been paid, and in like manner deducting from the amount of the assessment two forty-fifths thereof for each year's rent that has been paid. 38 V. c. 25, s. 1. (3.)

How the owner of land assessed may discharge it from the rent-charge.

**42.** Upon receiving payment of the amount required in order to discharge any parcel or lot, the Treasurer shall make out in duplicate a certificate (to which the Clerk shall affix the seal of the Municipality) to the effect or in the form following:—

Certificate of discharge.

"I, A. B., Treasurer of the Township of G., in the County of X., do hereby certify that the sum of \$            was in 18            assessed against lot            in the            concession of the said Township on account of Drainage Works under an assessment roll deposited with the Registrar of the County of X., on the            day of 18            . That a rent-charge of \$            per annum has been paid in respect of such assessment for            years, and the sum of \$            is now paid by C. D., in discharge of the rent-charge imposed on account of the said assessment, and the said lot is therefore discharged therefrom."

38 V. c. 25, s. 1. (4.)

**43.** The Treasurer shall retain one of such certificates, and deliver the other to the person paying off the charge, and with the next remittance in respect of rent-charges made by him to the Treasurer of the Province shall remit the amounts received by him for the purpose of paying off any rent-charges, and shall transmit therewith the duplicate certificate of discharge retained by him. 38 V. c. 25, s. 1. (5.)

Treasurer's duty as to discharges and remittances.

**44.** Upon the production of a certificate of discharge under the corporate seal of the Municipality, the Registrar shall number and file the same, and upon the line on which such parcel or lot is entered upon the assessment roll shall write, "*Discharged by No.*" (giving the registry number of the discharge). 38 V. c. 25, s. 1. (6.)

Registry of discharge.

Fees.

**45.** The Treasurer for making out such discharge in duplicate, and the Registrar for registering the same, shall be each entitled to charge a fee of fifty cents. 38 V. c. 25, s. 1. (7.)

If land improved be occupied by some other than the proprietor under some agreement, the assessors to determine the increased rent or tax to be paid.

**46.** In case any land which has been drained or improved by drainage under this Act is not, at the time of making the said assessment roll, in the actual possession of the owner or proprietor, but is held under him by some other person or persons by virtue of a lease, agreement or other instrument having more than one year to run, then and in such case the said Assessors shall determine the amount of increased rent or tax which such tenant or occupant shall pay in consequence of any improvement in such land, regard being had to the duration, extent and value of the interest of such occupant in the premises, and to the particular circumstances of the case; and the landlord of such tenant and occupant shall have the same remedies for the recovery of such increased rent as he was entitled to for the rent originally stipulated.

Remedy therefor.

Case of payment by occupant of the rent-charge.

2. The decision of the said Assessors shall be signified by endorsement on the lease or instrument under the hands of the said Assessors; and every such tenant and occupier who pays for the land in his occupation any sum charged thereupon, under and by virtue of the provisions of this Act, shall be and he is hereby authorized to deduct and retain out of his rent the amount of the sum of money which he so pays as aforesaid; but nothing herein contained shall extend, or be construed to enable any occupier or lessee to deduct from his rent any costs or expenses incurred by non-payment of the moneys hereby imposed or authorized to be paid. 36 V. c. 38, s. 33.

In case of Crown Lands, Commissioner of Crown Lands to pay rent-charge.

**47.** Wherever a rent-charge has become charged on land belonging to Her Majesty, the said rent-charge shall not be levied or collected by the Council of the Municipality in which the said land is situated, or their Collector, Treasurer or officer, but the said rent-charge as it falls due, or in lieu thereof the principal sum to which the said rent-charge corresponds, shall be paid over by the Commissioner of Crown Lands to the Treasurer of the Province for Her Majesty's behoof, and the sum or sums so paid over shall be entered by the said Treasurer in the separate account hereinbefore appointed to be opened in the books of his Department; and the said rent-charges, or the principal sums received in lieu thereof, and also all other rent-charges or principal sums received in lieu thereof, may continue to be applied in carrying out the purposes of this Act. 36 V. c. 38, s. 34.

Separate accounts therefor.

Disputes as to boundaries to be settled by the Assessors.

**48.** If any dispute or difference arises between any persons interested or claiming to be interested in any land or water to be drained or improved in pursuance of this Act, touching and concerning any boundaries, or any other rights or interests which the said persons, or any of them, have or claim to have in or over any such land or water, or touching

any other matter relating thereto, it shall be lawful for the aforesaid Assessors, as well by the examination of witnesses upon oath as by all other proper and sufficient evidence, to examine into, hear and determine the same, and such determination shall be binding and conclusive upon all such persons for the purposes of this Act, but not further or otherwise. 36 V. c. 38, s. 35.

**49.** Should any dispute arise between individuals, or between individuals and a Municipality or Company, or between a Company and Municipality, or between Municipalities, as to damages alleged to have been done or to be done to the property of any Municipality, individual or Company, in the construction of drainage works, or consequent thereon, then the Municipality, Company or individual complaining, shall refer the matter to arbitration, as provided in "*The Municipal Act*:" and the awards so made shall be binding on all parties. 36 V. c. 38, s. 36.

Disputes as to damages to be referred to arbitration.

Rev. Stat. c. 174.

**50.** In cases where two or more Municipalities, which will jointly participate in the benefit of any drainage works, have applied in manner hereinbefore prescribed, to the Commissioner of Public Works, either on the written application of the Council of any such Municipality, or by petition of the majority of all the owners, or of the majority of the owners as shown by the last revised assessment roll to be resident on the property described in the petition, in any such Municipality, or by the Council of one Municipality, and a majority as aforesaid of the owners of land in another Municipality described in the petition for the drainage of such property, and such drainage has been undertaken and completed by the Commissioner of Public Works, and an award for damages has been made under the next preceding section, then the amount so awarded in respect of such damages shall be estimated and assessed as part of the cost of the drainage works which caused them; and all the Assessors appointed by such Municipalities as hereinbefore prescribed, being three in number for each Municipality, or the Official Arbitrators, or the persons appointed by the Commissioner of Public Works, as the case may be, shall act in conjunction in making the assessment throughout each and all of such Municipalities, and such assessment shall be made in the same manner and with the same formalities as are herein prescribed in the case of a single Municipality. 36 V. c. 38, s. 37.

Assessment of municipalities where two or more municipalities derive benefit from drainage works, and damages awarded.

**51.** The Assessors, Official Arbitrators, or persons appointed by the Commissioner of Public Works, as the case may be, shall, when they have completed the assessment mentioned in the preceding section, deposit an attested copy of their assessment roll with the County Judge of the County in which such Municipalities are situate, and such assessments shall be subject to the like appeal to such Judge as assessments in regard to a single Municipality. 36 V. c. 38, s. 38.

Assessment roll to be deposited with County Judge



Appeals from  
assessment.

**52.** The said Judge shall, upon receiving such assessment roll, forthwith publish it in manner heretofore provided in regard to a single Municipality, together with a notice that he will, at such time, being not earlier than twenty nor later than thirty days from the day on which the assessment roll was first published, and at such place as he may appoint, hear and determine all matters in dispute in regard to such assessment; and his decision thereon shall be absolute and final, and such Judge shall in all such matters have the powers and duties mentioned in section eighteen of this Act. 36 V. c. 38, s. 39.

Cost of pub-  
lication.

**53.** The said Judge shall not be liable, either personally or officially, for the cost of such publication, but shall be considered as acting therein as the duly authorized agent of the Municipalities interested, which alone shall be liable for the said cost, in the proportion to be settled by the said Judge, based upon the proportional amount assessed against each Municipality. 36 V. c. 38, s. 40.

Assessment  
when assessors  
are unable to  
agree.

**54.** Where in the case of two or more Municipalities which will jointly participate in the benefit of any drainage works, an award for damages has been made under section forty-nine, but the Assessors for such Municipalities are unable to agree upon a general assessment throughout each and all such Municipalities, then the three Assessors for any single Municipality may jointly make a separate assessment roll for all such Municipalities, an attested copy of which shall be deposited with the County Judge, and the said Judge, at such time and place as he may appoint, shall hear and determine all differences between the said Assessors as to such assessment, whether as regards the total amount thereof, or as regards the mode in which the same is to be apportioned between the several Municipalities and the lands therein, and the decision of the said Judge on all such matters shall be final and binding upon all the Municipalities interested. 36 V. c. 38, s. 41.

## CHAPTER 34.

An Act respecting the investment of public money in debentures issued for the construction of Drainage Works by Municipalities.

Short title, s. 1.

Township undertaking drainage works may apply for sale of debentures, s. 2.

Commissioner of Public Works to report as to investment, ss. 3, 4.

Investment, ss. 5, 6.

Debentures not to be questioned after investment made, s. 7.

Past investments, s. 8.

Remittance of amount payable on debentures to the Provincial Treasurer, s. 9.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Ontario Municipal Drainage Aid Act*." Short Title.

2. Any Township Municipality proposing to undertake works under the provisions of sections five hundred and twenty-nine to five hundred and fifty inclusive of "*The Municipal Act*" may, after the expiration of the time limited for serving notice of intention to make application to quash the by-law, deposit with the Commissioner of Public Works authenticated copies (if deemed necessary by the Commissioner), of the plans, specifications and estimates of the works, and a copy of the by-law; and may apply for the sale of the debentures authorized thereby. Townships undertaking works under Rev. Stat. c. 174, ss. 529-550, may deposit with Commissioner of Public Works of copies of plans, &c.

3. Such application shall be in writing, sealed with the seal of the Municipality, and signed by the Reeve or other head officer thereof, and shall be accompanied by two affidavits, one to be made by the said Reeve or other head officer, in form or to the effect set forth in Schedule A to this Act, and the other to be made by the Clerk of the Municipality, in form or to the effect set forth in Schedule B to this Act; said affidavits to be sworn before any Justice of the Peace. 36 V. c. 39, s. 19; 37 V. c. 20, s. 6; 40 V. c. 7, *Sched. A* (22). And apply for sale of debentures.

4. The Commissioner of Public Works shall investigate and report to the Lieutenant-Governor in Council as to the propriety of the investments proposed in such applications, in the order of time in which they are deposited; and such reports shall be disposed of by the Lieutenant-Governor in Council in the order of time in which the same are made. 36 V. c. 39, s. 20. Commissioner of Public Works to report as to investment.

When the Commissioner shall not report propriety of investment.

4. The Commissioner of Public Works shall not certify to the propriety of the investment in any case in which the aggregate amount of the rates necessary for the payment of the current annual expenses of the Municipality and the interest and principal of the debts contracted by the Municipality exceed the aggregate value of three cents in the dollar on the whole value of the rateable property within its jurisdiction, or in any case in which the debentures to be issued under the by-law exceed thirty thousand dollars; and the amount invested under this Act in the purchase of debentures of any Municipality shall not at any one time exceed twenty thousand dollars. 36 V. c. 39, s. 24; 40 V. c. 8, s. 69.

Purchase out of Con. Rev. Fund of debentures.

5. The Lieutenant-Governor in Council may from time to time in his discretion invest any surplus of the Consolidated Revenue Fund, not exceeding in the whole at any one time the sum of two hundred thousand dollars, in the purchase of any debentures issued under by-laws so deposited as aforesaid, in respect of which the Commissioner of Public Works certifies to the propriety of the investment. 36 V. c. 39, s. 21.

Lieut.-Governor in Council may advance par value of debentures.

6. On any such investment the Lieutenant-Governor may, in his discretion, advance the whole par value of debentures, or may retain such per centage thereof as he may see fit until the Commissioner of Public Works has reported that the works have been inspected and are completed; and any expenses in connection with the investigation and inspection made under this Act shall be deducted from the amount (if any) retained. 36 V. c. 39, s. 22; 37 V. c. 20, s. 5.

When debentures unquestionable.

7. After any such investment has been made, the debentures shall not be questioned, and shall be deemed to be valid to all intents and purposes. 36 V. c. 39, s. 23.

Investment in purchase of debentures by Lt.-Governor in Council made valid.

8. Any investment heretofore made, or which may be hereafter made, by the Lieutenant-Governor in Council in the purchase of debentures issued under any municipal by-law for the construction of Drainage Works, passed under the authority of the Municipal Law of Ontario, shall stand upon the same footing and be as valid and effectual as if such by-law had been passed under the authority of "*The Municipal Drainage Aid Act*," passed in 1873. 37 V. c. 20, s. 4.

Amount payable under by-law to be remitted to Provincial Treasurer.

Consequences of neglect.

9. The amount payable in any year under any such by-law or debentures for principal and interest shall be remitted by the Treasurer of the Municipality to the Treasurer of the Province, within the space of one month after the same has become exigible, together with interest at the rate of seven per centum per annum, during the time of default in payment; and in case of the continuance of such default, the Council of the Municipality shall in the next ensuing year assess and levy on the whole rateable property within its jurisdiction, in the same manner in which taxes

are levied for the general purposes of the Municipality, a sufficient sum to enable the Treasurer of the Municipality, over and above the other valid debts of the Corporation falling due within the year, to pay over to the Treasurer of the Province the amount in arrear, together with interest thereon at the rate of seven per centum per annum, during the time of default in payment, whether the same has been previously recovered from the parties or lands chargeable under the by-law with the same or not; and the amount so in arrear and interest shall be the first charge upon all the funds of the Municipality, for whatever purpose, or, under whatever by-law they may have been raised.

2. No Treasurer or other officer of the Municipality shall after such default, pay any sum whatsoever, except for the ordinary current disbursements, and salaries of clerks and other employees of such Municipality, out of any funds of the Municipality in his hands, until the amount so in arrear and interest have been paid to the Treasurer of the Province.

Duty and liability of municipal Treasurer after default.

3. If any such Treasurer or municipal officer pays any sum out of the funds of his Municipality, except as aforesaid, contrary to the provision hereinbefore made, in addition to any criminal liability which he may thereby incur, he shall be personally liable to the Treasurer of the Province for every sum so paid, as for money received by him for the Crown; and any Reeve or Councillor wilfully or negligently omitting to see the foregoing provisions carried into effect shall also be personally and individually liable to the Treasurer of the Province for the full amount so in arrear and interest, to be recovered with costs by the said Treasurer of the Province, in any suit as for money had and received for Her Majesty's behoof: but no assessment, levy or payment made under this section shall in anywise exonerate the persons or lands chargeable under the by-law from liability to the Municipality. 36 V. c. 39 s. 25.

Liability of Reeves and Councillors.

## SCHEDULE "A."

(Section 2.)

### AFFIDAVIT OF REEVE OR OTHER HEAD OFFICER.

County of \_\_\_\_\_ } I,  
To Wit, } of the \_\_\_\_\_ of  
in the County of \_\_\_\_\_  
and Province of Ontario, (*Reeve*) of the Township of \_\_\_\_\_  
make oath and say :

1. That I have not been served with any notice of intention to make application to quash a certain by-law passed on the \_\_\_\_\_ day of \_\_\_\_\_

in the year of our Lord

by the Municipal Council of the said Township  
of \_\_\_\_\_ in regard to the Drainage of \_\_\_\_\_



a certain portion of the said Township, nor have I been served with any notice of intention to make application to quash any part of said by-law, nor with any notice to that or the like effect.

Sworn, &c.

## SCHEDULE "B."

(Section 2.)

### AFFIDAVIT OF CLERK OF THE MUNICIPALITY.

County of \_\_\_\_\_ To Wit. } I, \_\_\_\_\_ of \_\_\_\_\_  
 } of the \_\_\_\_\_ in the County of \_\_\_\_\_  
 and Province of Ontario, Clerk of the Township  
 make oath and say :

1. On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
 of our Lord \_\_\_\_\_ the Municipal  
 Council of the said Township of \_\_\_\_\_ passed a by-law in  
 regard to the drainage of a certain portion of the said Township, a true  
 copy of which is now shown to me marked "A."

2. Before the said \_\_\_\_\_ day of \_\_\_\_\_  
 the said by-law, together with a notice that any one intending to apply to  
 have such by-law or any part thereof quashed, must, within ten days  
 after the passing thereof, serve a notice in writing upon the Reeve or  
 other head officer, and upon the Clerk of the Municipality, of his inten-  
 tion to make application for that purpose to one of Her Majesty's Superior  
 Courts of Law at Toronto, during the Term next after the final passing  
 of the by-law, and, together with a notice of the time of holding the Court  
 of Revision of the said Township, was published on (insert dates of publica-  
 tion) in the (insert name of newspaper), a newspaper published at  
 \_\_\_\_\_ in the Township of \_\_\_\_\_ (if published in  
 another Municipality, add: being the nearest Municipality to the said Town-  
 ship of \_\_\_\_\_ in which a newspaper is published, there  
 being no newspaper published in the said Township of \_\_\_\_\_ )  
 a copy of which newspaper containing the said by-law and notice is now  
 shown to me and marked "B."

3. I have not been served with any notice of intention to make appli-  
 cation to quash said by-law, nor with any notice of intention to make  
 application to quash any part thereof, nor with any notice to that or the  
 like effect.

4. To the best of my knowledge, information and belief, no person  
 assessed by the said by-law paid the amount of his assessment less the  
 interest, or any part thereof, at any time before the actual issue of the  
 Debentures thereunder, which were issued on the \_\_\_\_\_ day of \_\_\_\_\_  
 in the year of our Lord \_\_\_\_\_

5. The amount of the rates assessed as set forth in said by-law have not  
 been altered by the Court of Revision for the said Township of \_\_\_\_\_  
 nor by the County Judge, nor has the said by-law been repealed or  
 amended by the said Council of the said Township of \_\_\_\_\_  
 but the said by-law is to all intents and purposes the same, and as valid  
 and subsisting as it was when finally passed on the said \_\_\_\_\_  
 day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_

6. The copies of the specifications and estimates for the said drainage  
 now shown to me and marked \_\_\_\_\_ are true and  
 authentic copies of the specifications and estimates made by  
 for the said drainage, as mentioned in the said by-law.

Sworn, &c.

## 5. *Agriculture and Arts.*

CHAP. 35—Agriculture, Horticulture, Arts and Manufactures, p. 343.

### CHAPTER 35.

An Act for the encouragement of Agriculture, Horticulture, Arts and Manufactures.

- Short title, s. 1.  
 Interpretation, s. 2.  
 Commissioner to decide disputes as to the working or construction of the Act, s. 3.  
 Bureau and existing Societies, continued, s. 4.  
 BUREAU OF AGRICULTURE AND ARTS, ss. 5-11.  
 AGRICULTURAL AND ARTS ASSOCIATION—  
   Members, s. 12.  
   Contracts by and with, s. 13.  
   Deposit and payment of Funds of, s. 14.  
   Liabilities to be paid every year, s. 15.  
   Directors, ss. 16, 17.  
 Council of the Association—  
   Composed of 13 representatives of Agricultural Divisions, ss. 18, 19.  
   Election of representatives, s. 20.  
   Retirement of members, s. 21.  
   Members to serve gratuitously, s. 22.  
 Powers and Duties—  
   Holding of Property, s. 23.  
   Duties between annual meetings, s. 24.  
   Election of officers, &c., s. 25.  
   Holding of Provincial Exhibitions, s. 26.  
   Importation of animals, grains, &c., s. 26.  
   Improvement of agriculture, s. 26.  
   Establishment of Veterinary College, s. 27.  
   Privileges of Veterinary Surgeons, s. 27.  
   Record of transactions, s. 28.  
   Annual report to Bureau, s. 29.  
   Expenditure of money, s. 30.  
   In relation to Exhibition prizes, &c., ss. 31-34.  
 ELECTORAL DISTRICT AGRICULTURAL SOCIETIES—  
   Organization, ss. 35, 36.  
   Powers, s. 37.  
   Objects, s. 38.  
   Application of funds, s. 39.  
   Officers and management of the Society, 40-46.  
   Annual report to be made and copy sent to Bureau, s. 47.  
   Reports from Township Societies, s. 48.  
   On division of an Electoral District, formation of new Societies, s. 49.  
   Aid to, ss. 50, 67.  
 TOWNSHIP AGRICULTURAL SOCIETIES.  
   Organization, ss. 51-54.  
   Officers, s. 55.  
   Annual report, ss. 56, 57.  
   Dissolution of Union Societies, s. 58.  
   Powers as to lands, s. 59, 60.  
   Aid to, s. 68.  
   Exhibitions, s. 73.  
 HORTICULTURAL SOCIETIES—  
   Formation, ss. 61-63.  
   Officers and management of Society, ss. 64, 65.  
   Annual report, s. 66.  
   Aid to, s. 68.  
   Exhibitions, s. 72.

## GRANTS TO AGRICULTURAL AND HORTICULTURAL SOCIETIES, ss. 67-70.

## EXHIBITIONS—

Electoral District Societies, s. 71.

Union of District and Township Societies, s. 72.

Township Societies, s. 73.

## ASSOCIATION OF MECHANICS' INSTITUTES, ss. 74-76.

## MECHANICS' INSTITUTES—

Aid to, ss. 77-81.

Business year, s. 81.

Inspection of, ss. 82-84.

## ONTARIO SOCIETY OF ARTISTS—

Organization, s. 85.

Aid to, s. 86.

Annual meeting, s. 87.

Annual report, s. 88.

## FRUIT GROWERS' ASSOCIATION—

Composition of, s. 89.

Aid to, s. 90.

Annual meeting, s. 91.

Officers, s. 92.

Annual report, s. 93.

## ENTOMOLOGICAL SOCIETY—

Composition of, s. 94.

Aid to, s. 95.

Annual meeting, s. 96.

Annual report, s. 97.

## DAIRYMEN'S ASSOCIATIONS—

Eastern Ontario, s. 98.

Western Ontario, s. 98.

Aid to, s. 99.

Apportionment of property of the former Association, s. 100.

Annual meetings, s. 101.

Annual report, s. 102.

Cheese and Butter Fairs, s. 103.

## GENERAL PROVISIONS—

Frauds at Exhibitions, s. 104.

Right of voting at elections, ss. 105, 106.

Vacancies in office, how filled, s. 107.

Illegal elections, s. 108.

Majority of officers to be resident, s. 109.

Delegates to be furnished with certificates of appointment, s. 110.

Payment of grants, s. 111.

School farms, s. 112.

Municipal aid to Societies, s. 113.

Keeping the peace at Exhibitions, s. 114.

Injuries to property at Exhibitions, s. 115.

Gambling prohibited at Exhibitions, s. 116.

Horse racing prohibited at Exhibitions, s. 117.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

Short title.           1. This Act may be cited as "*The Agriculture and Arts Act.*"

Interpretation.       2. In the construction of this Act,

(1.) "Commissioner" or "Commissioner of Agriculture" shall mean the "Commissioner of Agriculture and Arts;"

"Bureau."           (2.) "Bureau" and "Bureau of Agriculture" shall mean the "Bureau of Agriculture and Arts;"

"Council."           (3.) "Council" or "Council of the Association" shall mean "Council of the Agricultural and Arts Association;" and

"Electoral District."   (4.) "District" and "Electoral District" shall mean a District as constituted for the purpose of representation in the Legislative Assembly. 40 V. c. 17, s. 2.

Commissioner to decide disputes.       3. The Commissioner of Agriculture may decide all matters of doubt or dispute as to the working or construction of this Act, and his decision shall be final, except that an appeal therefrom may be made to the Lieutenant-Governor in Council. 40 V. c. 17, s. 3.

4. The Bureau of Agriculture and Arts, the Agricultural and Arts Association, the Directors of the Agricultural and Arts Association, the Council of the Agricultural and Arts Association, all Agricultural and Horticultural Societies and Mechanics' Institutes heretofore recognized and existing in Ontario, the Association of Mechanics' Institutes of Ontario, the Fruit Growers' Association of Ontario, the Entomological Society of Ontario, the Dairymen's Associations of Ontario, and the Ontario Society of Artists, shall continue, except so far as they may be altered or affected by this Act. 40 V. c. 17, s. 4.

Bureau and  
Societies  
continued.

#### BUREAU OF AGRICULTURE AND ARTS.

5. The Bureau of Agriculture and Arts shall be attached to the Department of the Commissioner of Agriculture, who shall be charged with the direction of the said Bureau, and shall in respect thereof be known as the Commissioner of Agriculture and Arts. 40 V. c. 17, s. 5.

Commissioner  
to direct  
Bureau.

6. It shall be part of the duty of the said Commissioner of Agriculture to institute inquiries and collect useful facts and statistics relating to the agricultural, mechanical and manufacturing interests of the Province, and to adopt measures for disseminating or publishing the same in such manner and form as he finds best adapted to promote improvement within the Province, and to encourage immigration from other countries; and he shall submit to the Legislature, within thirty days after the opening of each Session thereof, a detailed and succinct report of his proceedings. 40 V. c. 17, s. 6.

To collect and  
disseminate  
facts relating  
to Agriculture,  
&c.

Annual  
report.

7. The Commissioner of Agriculture may at any time, and from time to time, appoint any person or persons to inspect the books and accounts of any Society or body in the Province receiving Government aid, and being in any way in connection with the Bureau, and may empower any such person to summon witnesses and enforce the production of documents before him, and to take evidence upon oath in regard to any such inspection; and all officers of any such Society or body, whenever required so to do, shall submit such books and accounts to such inspection, and truly, to the best of their knowledge, answer all questions put to them in relation thereto, or to the funds of such Society or body. 40 V. c. 17, s. 7.

Commissioner  
may appoint  
persons to in-  
spect accounts  
of Societies,  
&c.

8. The said Commissioner may, in connection with the Bureau, cause to be established at the School of Agriculture, at Guelph, a museum illustrative of Agriculture, Horticulture, Natural History, Arts and Manufactures, and also a library of books in the same departments of industry; and the said museum and library shall be free for examination or reference during the usual office hours. 40 V. c. 17, s. 8.

Museum and  
Library.

9. The Lieutenant-Governor in Council may appoint a Secretary of the Bureau, who shall be known as the "Secretary of the Bureau of Agriculture and Arts;" and may also appoint

Secretary of  
Bureau.



such other officers as may be necessary for the proper conduct of the Bureau. 40 V. c. 17, s. 9.

Duties of  
Secretary.

**10.** It shall be the duty of the Secretary to conduct all correspondence connected with the Bureau, under the instructions of the Commissioner; to examine the affidavits and papers sent in by bodies coming under this Act, and claiming grants thereunder, and to see that the same are in accordance with the provisions thereof; to certify all claims for grants and all accounts relating to the appropriation for "Agriculture and Arts," and to transmit the same for payment to the Provincial Treasurer; to prepare the annual estimates for the said appropriation, and to keep an account of the expenditure in respect thereof; to file all accounts and documents; and generally to do and perform all such acts and things pertaining to the business of the Bureau, as he may from time to time be directed by the Commissioner. 40 V. c. 17, s. 10.

Officers of So-  
cieties, &c., to  
answer all  
questions and  
communica-  
tions.

**11.** The officers of all Societies, Institutes and Associations coming under this Act, and of all Municipal Councils and Public Institutions, and all public officers in this Province, shall promptly answer official communications from the said Bureau, shall make diligent efforts to supply correct information on all questions submitted to them respectively, and generally shall act as far as practicable upon the recommendations of the Commissioner; and any officer of any such Society, Institute, Association, Council, or Public Institution, refusing or wilfully neglecting to answer any question, or to furnish any information relating to the agricultural, mechanical or manufacturing interests, or to the statistics of this Province, whenever required so to do, either by the said Commissioner, or by any person duly authorized by him in that behalf, shall for every such offence incur a penalty of forty dollars, which shall be recoverable by any person suing for the same before any Court of competent jurisdiction, and shall be paid to Her Majesty. 40 V. c. 17, s. 11.

Penalty for  
refusing.

#### THE AGRICULTURAL AND ARTS ASSOCIATION.

Who shall be  
members of the  
Association.

**12.** The members of the Council of the Agricultural and Arts Association, both elected and *ex officio*, the Presidents and Vice-Presidents of all lawfully organized Electoral District Agricultural Societies, and of all Horticultural Societies and Mechanics' Institutes, all life members, and all subscribers of one dollar annually (which shall entitle such subscribers to membership only for the year for which their subscription is paid), shall constitute the Agricultural and Arts Association.

Life members.

**2.** The payment of ten dollars shall constitute a life membership of the Association, when given for that special object, and not as a contribution to any local fund; and those persons who have heretofore been made life members under by-laws of the Association shall continue to be life members of the same. 40 V. c. 17, s. 12.

**13.** All contracts and all legal proceedings by, with, or concerning the Association, shall be made and had with the said Council in its corporate capacity; and no other contract or legal proceeding shall bind or affect the Association. 40 V. c. 17, s. 13.

Contracts to be made with Council

**14.** All funds of the Association, except silver paid out during the time of holding or within one week after the close of the annual Provincial Fair or Exhibition, shall be deposited to the credit of the Association, in a chartered bank of the Dominion of Canada, to be selected by the Council of the Association; and all payments made thereout shall be by cheques drawn on such bank by the Treasurer of the Association and countersigned by the Secretary thereof. 40 V. c. 17, s. 14.

Funds of Association to be deposited in a chartered bank.

**15.** All liabilities of the Association shall, except in cases of reasonable dispute regarding the same, and except where payment of such has not been authorized by the Council, be paid on or before the thirty-first day of December of the year in which the same were incurred; and when a payment is made through the post, it shall be by cheque marked "good" by the Bankers of the Association. 40 V. c. 17, s. 15.

Liabilities of Association to be paid by 31st Dec.

#### THE DIRECTORS OF THE ASSOCIATION

**16.** The members of the Council, both elected and *ex officio*, the ex-Presidents of the Agricultural and Arts Association, and the Presidents and Vice-Presidents of the Electoral District Societies, Mechanics' Institutes, and of all Horticultural Societies (or any two members whom an Electoral District Society, Mechanics' Institute, or Horticultural Society has appointed to act instead of its President and Vice-President), shall be the Directors of the Agricultural and Arts Association. 40 V. c. 17, s. 16.

Directors of the Association.

**17.** The Directors shall hold a meeting during the week of the annual Exhibition, at the place where such Exhibition is held, and shall at such meeting elect two Auditors, whose duty it shall be to examine the accounts of all moneys received and expended by the Treasurer of the Association, and to examine into the assets and liabilities of the Association, and on or before the first day of February ensuing to report as to said accounts, receipts, expenditure, assets and liabilities to the Secretary of the Association, who shall, on or before the first day of June ensuing, cause such report to be printed, and a copy thereof to be sent to the Commissioner of Agriculture, to the President of the Association, to each member of the Council, to the Presidents, Vice-Presidents, Secretaries, and Treasurers of all Electoral District and Horticultural Societies and Mechanics' Institutes, and of the Fruit Growers' Association of Ontario, the Entomological Society of Ontario, the Dairymen's Associations of Ontario, the Ontario Society of Artists, and to

Meeting to be held during Exhibition for election of Auditors.

Report to be sent to Commissioner, &c.

the Auditors who made such report; the Directors shall also appoint the place for holding the next meeting and Exhibition of the Association, and may make rules and regulations for the management of such Exhibition. 40 V. c. 17, s. 17.

#### THE COUNCIL OF THE ASSOCIATION.

**Council of the Association.** **18.** The Council of the Agricultural and Arts Association shall be composed of thirteen members, elected as hereinafter provided; and the Commissioner of Agriculture, the Minister of Education, all Professors of Agriculture in chartered Colleges and Universities, the Presidents (or in their absence the Vice-Presidents) of the Fruit Growers' Association, the Entomological Society, the Dairymen's Associations, and the Ontario Society of Artists, and the President, and Vice-President of the Association of Mechanics' Institutes of Ontario, and such other person as the said Association may appoint, or, in the absence of such President, or Vice-President, then such persons as the said Association may appoint in place of the said officers, or either of them shall be members, *ex officio*, of such Council of the Association. 40 V. c. 17, s. 18.

**Agricultural Divisions.** **19.** Ontario shall be divided into thirteen Agricultural Divisions, designated by numbers, as in Schedule A annexed to this Act, each comprising the Electoral Districts designated in said Schedule.

2. The Counties named in said Schedule A shall mean all the Electoral Districts embraced within such Counties. 40 V. c. 17, s. 19.

**District Societies to elect a delegate.** **20.** The Electoral District Agricultural Societies in each Division shall, at their annual meetings provided for by section forty of this Act, each elect a delegate by a majority of the votes of the members of the Society present at such meeting; and the Secretary of each Society shall, within six days after the election, forward to the Commissioner of Agriculture the name of the delegate so elected by the Society.

**Secretary to supply Commissioner with name of delegate.**

**Official notice of election.**

2. The Commissioner of Agriculture shall, as soon as practicable after being notified by the Secretaries as aforesaid, appoint a time and place at which the said delegates shall meet and elect a person to represent the Division in the Council of the Association, and name the Society having the greatest number of members for the preceding year.

**Where votes equal.**

3. In case of an equality of votes for two or more persons the delegate representing the Electoral District Society having the greatest number of members for the preceding year shall have a casting vote.

4. Vacancies through death, resignation, or otherwise, shall be filled up by the Commissioner of Agriculture. 40 V. c. 17, s. 20. Vacancies.

**21.** The four members representing Divisions numbers nine, ten, eleven and twelve, shall retire, and four other persons shall be elected at the annual meetings in said Divisions, and one other person shall be elected in Division thirteen, in the year one thousand eight hundred and seventy-eight; and the four members representing Divisions numbers one, two, three, and four, shall retire, and four other persons shall be elected at the annual meetings in the said Divisions, in the year one thousand eight hundred and seventy-nine; and the four members representing Divisions numbers five, six, seven, and eight shall retire, and four other persons shall be elected at the annual meetings in said Divisions, in the year one thousand eight hundred and eighty; and thereafter, in the order in which such members have been elected for the respective Divisions, four (or five, as the case may be), members of the Council shall retire annually, each seat being vacated every third year; but retiring members may continue to exercise all their functions until their successors have been duly elected: The retiring members of the Council shall be eligible for re-election, and the Secretary of the Association shall send a list of the names of the retiring members to the Secretary of each Electoral District Society, on or before the first day of December in each year. 40 V. c. 17, s. 21. Four members of Board to retire annually

**22.** Subject to the provisions of section twenty-five the said Council shall not pay or allow any sum to any member thereof for acting as such member, except the amount of his actual necessary expenses in attending the regular meetings of the Council, and of the committees thereof. 40V. c. 17, s. 22. Members to act gratuitously.

#### POWERS AND DUTIES OF THE COUNCIL.

**23.** The said Council shall continue to be a body corporate, and may acquire and hold land and personal property for the purposes of the Association, and may sell, mortgage, lease, or otherwise dispose of the same; and all property, real or personal, heretofore vested in or held by the Agricultural and Arts Association, shall continue to be vested in the said Association, and to be under the control of the Council thereof. 40 V. c. 17, s. 23. Council to be a body corporate.

**24.** The said Council shall have full power to act for and on behalf of the Association between the annual meetings of the Directors thereof; and all grants of money, subscriptions or other funds, made or appropriated to or for the use of the Association (except money collected by or granted to any local committee for the local expenses of an Exhibition), shall be received by and expended under the direction of such Council. 40 V. c. 17, s. 24. Powers of the Council.



President, etc.,  
to be elected.

Treasurer.

Secretary.

Secretary and  
Treasurer to  
continue.

Officers of  
Association.

Chairman  
*pro tem.*

Quorum.

Regular meet-  
ings of the  
Council.

Duties of the  
Council.

Annual Exhi-  
bition.

Importation  
of improved  
breeds of  
animals, &c.

**25.** The first meeting of the Council of the Association, after the election of members in each and every year, shall be called by the Secretary of the Association some time during the month of March; and at such meeting the members present shall elect from among the elected members a President and Vice-President, and shall also elect a Treasurer from among themselves or otherwise; but if not elected from among themselves, such Treasurer shall be *ex officio* a member of the Council; and the said Treasurer shall furnish such security as the Council may deem necessary, and he may be paid a reasonable salary for his services.

2. The Council may appoint a Secretary, and may pay him a reasonable salary for his services; and the Council shall also pay the Auditors appointed, as provided for in section seventeen, a reasonable remuneration for their services.

3. The present Secretary and the present Treasurer shall continue to be the Secretary, and the Treasurer of the Council until otherwise provided by the Council.

4. The President, Vice-President, Secretary, and Treasurer of the Council, shall, *ex officio*, be respectively President, Vice-President, Secretary, and Treasurer of the Association.

5. In the absence of the President or Vice-President from any meeting, the Council may appoint a chairman *pro tempore*.

6. Seven members of the Council shall be a quorum.

7. The regular meetings of the Council shall be held pursuant to adjournment, or be called by the Secretary at the instance of the President, or in his absence of the Vice-President, or upon the written request of any three members; and at least seven days' notice of such meetings shall be given to each member. 40 V. c. 17, s. 25.

**26.** It shall be the duty of the Council :

1. To hold a Fair or Exhibition annually, open to competitors from any part of the Dominion of Canada, or from other countries, as the Council may see fit; and also to appoint a local committee at the place where such Exhibition is appointed to be held, and prescribe the powers and duties of the said committee.

2. To take measures to obtain from other countries animals of new or improved breeds, new varieties of grain, seeds, vegetables or other agricultural productions, new or improved implements of husbandry, or new machinery which may appear adapted to facilitate agricultural operations; and to test

the quality, value and usefulness of such animals, grain, seeds, vegetables, or other products, implements and machinery;

3. And generally, to adopt every means in their power to promote improvement in the Agriculture and Arts of the Province. 40 V. c. 17, s. 26. Improvement of Agriculture.

27. The Council may establish a Veterinary College for the instruction of pupils, by competent and approved teachers, in the science and practice of the veterinary art, and may pass by-laws, and adopt measures for the examination of such pupils in Anatomy, Physiology, Materia Medica, Therapeutics, Chemistry, and as to the breeding of domesticated animals; and, upon proof, to the satisfaction of the Council, that such pupils possess the requisite qualifications, may grant diplomas certifying that they are competent to practice as Veterinary Surgeons. Veterinary College.

2. Veterinary practitioners holding such diplomas shall be entitled to professional fees in attending any Court of Law as witnesses in such cases as relate to the profession; and no person who does not possess a diploma or proper certificate from some duly authorized Veterinary College, within or without this Province, shall append to his name the term Veterinary Surgeon, or any abbreviation thereof. Veterinary practitioners.

3. Any person who wilfully and falsely pretends to be, or who wilfully and falsely takes or uses any name, title, addition, abbreviation or description implying, or calculated to lead people to infer that he is, or is recognized by law as, a Veterinary Surgeon, within the meaning of the foregoing subsections of this section, or that he possesses a diploma or proper certificate from some duly authorized Veterinary College within or without the Province, shall, upon summary conviction before any Justice of the Peace, pay a penalty not exceeding one hundred dollars, and not less than twenty-five dollars. Penalty on wrongfully assuming title of Veterinary Surgeon.

4. All prosecutions under this section may be brought and heard before and by any Justice of the Peace having jurisdiction in the locality where the offence is alleged to have been committed, and such Justice shall have power to award payment of costs in addition to the penalty; and, in case the penalty and costs awarded by him are not upon conviction forthwith paid, to commit the offender to the common gaol, there to be imprisoned for any term not exceeding three months, unless the penalty and costs are sooner paid. Prosecutions.

5. All penalties recovered under this section shall be paid to the convicting Justice, and be paid by him to the Treasurer of the Agricultural and Arts Association, and shall thereupon Application of penalties.

form part of the funds of the said Association, and be accounted for as such.

Security to be given on appeals.

6. Any person convicted under this section, who gives notice of appeal against the decision of the convicting Justice, shall, before being released from custody, give to the said Justice satisfactory security for the amount of the penalty and costs of conviction and appeal.

Any one may prosecute within one year.

7. The Council or any person may be prosecutor or complainant under this section, and every prosecution thereunder shall be commenced within one year from the date of the alleged offence. 40 V. c. 17, s. 27.

Records of their transactions, essays, &c.

28. The Council shall keep a record of their transactions, and may from time to time publish, in such manner and form as to secure the widest circulation among the Agricultural Societies, and among farmers generally, all such reports, essays, lectures, and other useful information as the Council may procure and adjudge suitable for publication. 40 V. c. 17, s. 28.

Copy of reports, &c., to be sent to Bureau.

29. The Council shall transmit to the Bureau, on or before the first day of April in each year, a report of their proceedings during the preceding calendar year, and shall also when requested by the Commissioner of Agriculture, send a copy of their resolutions, by-laws, or other formal proceedings. 40 V. c. 17, s. 29.

Expenditure of money.

30. No resolution, by-law, or other proceeding of the Council involving an expenditure of money to an amount exceeding forty dollars, shall be passed or taken, except with the assent of a majority of the members thereof, or upon the recommendation of an Executive Committee of not less than three members, who shall be appointed in accordance with a by-law of the Association. 40 V. c. 17, s. 30.

Prize list to be mailed to prizeholders on or before the 1st of Nov.

31. A corrected list of the names of all persons to whom a prize has been awarded at the annual Provincial Fair or Exhibition shall be prepared and printed by the Secretary of the Association, and a copy thereof shall, on or before the first day of November next after the holding of each such Provincial Fair or Exhibition, be mailed to the address of every person to whom a prize has been awarded. 40 V. c. 17, s. 31.

Prizes to be applied for on or before 30th Nov.

32. All persons to whom a prize is awarded shall apply to the Secretary of the Association for payment thereof, on or before the thirtieth day of November of the year in which such prize is awarded, or shall forfeit such prize. 40 V. c. 17 s. 32.

Council to report as to Exhibition.

33. Within thirty days after the annual meeting of the Association, the Council shall cause to be presented to the

Commissioner of Agriculture a report of the Exhibition just closed, containing such information as the Council may have been enabled to obtain of the progress made in the respective departments of the Exhibition, as compared with the Exhibitions of previous years. 34 V. c. 23, s. 5.

**34.** The Corporation of any City or Town may enter into any agreement with the Council, binding such Corporation to erect the buildings necessary for holding the annual Exhibition of the Association; and in case the Council has, in consideration of any such Corporation undertaking to enter into such an agreement, selected such Corporation as the one within the territorial limits of which any such Exhibition shall be held, then, in the event of such Corporation failing to enter into any such binding agreement as aforesaid, on or before the first day of May in the year for holding such Exhibition, the Council may change the place for holding such Exhibition for that year. 40 V. c. 17, s. 34.

Agreements between Corporations of Cities and Towns, and the Council, as to erecting Exhibition buildings.

#### ELECTORAL DISTRICT AGRICULTURAL SOCIETIES.

**35.** An Agricultural Society may be organized in each of the Electoral Districts of Ontario (as from time to time constituted for the purpose of representation in the Legislative Assembly, in which there is not one already organized, whenever eighty persons have become members thereof, by signing a declaration in the form of Schedule B to this Act annexed, and paying each not less than one dollar to the funds of the Society for that year; and all persons thereafter paying each the sum of one dollar (or such other sum, not being more than two dollars, as the Society may by by-law fix) annually to the funds of the Society shall be members thereof; and a true copy of the said declaration shall, within one month after the money has been so paid, be transmitted to the Commissioner of Agriculture.

Society may be organized in each Electoral District.

2. The two Electoral Districts of the City of Toronto shall constitute only one District for the purposes of this Act. 40 V. c. 17, s. 35.

Toronto.

**36.** The first meeting for the formation of an Electoral District Agricultural Society under this Act shall be called by the representative of such Electoral District in the Legislative Assembly, for the third Wednesday of January in any year, at which meeting the election of officers, and the election of a delegate, as provided by section twenty, if one is to be elected for that year, shall take place; and the Society so organized shall be deemed the Electoral District Society, and shall be entitled to receive the Government grant hereinafter provided; and all subsequent annual meetings shall be called and held as provided in section forty of this Act. 40 V. c. 17, s. 36.

First meeting, how called.



District  
Societies to be  
bodies  
corporate.

**37.** The several Electoral District Societies organized at the time of the passing of this Act, or which may hereafter be organized, shall be bodies corporate, with power to acquire and hold land as a site for Fairs and Exhibitions, or for a School Farm, and, subject to the approval of a meeting of the Society, called for the purpose, to sell, mortgage, lease, or otherwise dispose of same, or any other property held by such Societies.

2. At least one week's previous notice of such meeting shall be given by advertisement in a newspaper published in the Electoral District and by placard; and at such meeting only members of at least two years' standing shall be allowed to vote. 40 V. c. 17, s. 37.

Objects of  
Societies.

**38.** The object of the said Societies, and of the Township Societies in connection therewith, shall be to encourage improvement in Agriculture, Horticulture, Arts and Manufactures:

Discussions,  
lectures, &c.

1. By holding meetings for discussion and for hearing lectures on subjects connected with the theory and practice of improved husbandry or other industrial processes;

Periodicals.

2. By promoting the circulation of agricultural, horticultural and mechanical periodicals;

Importing  
seeds, &c.

3. By importing and otherwise procuring seeds, plants and animals of new and valuable kinds;

Prizes for  
essays.

4. By offering prizes for essays on questions of scientific inquiry relating to Agriculture, Horticulture, Arts and Manufactures;

Premiums.

5. And by awarding premiums for excellence in the raising or introduction of stock, the invention or improvement of agricultural or horticultural implements and machinery, the production of grain and of all kinds of vegetables, plants, flowers and fruits, and generally for excellence in any agricultural or horticultural production or operation, article of manufacture or work of art. 40 V. c. 17, s. 38.

Application  
of funds.

**39.** The funds of the Societies, howsoever derived, shall not be expended for any object inconsistent with those above mentioned. 40 V. c. 17, s. 39.

Annual  
meeting.

**40.** The annual meeting of every Electoral District Society shall be held on the third Wednesday of January in each year, in a County, at one o'clock in the afternoon, and in a City, at seven o'clock in the afternoon; and at least one week's previous notice of such meeting shall be given, by advertisement in a newspaper published in the Electoral District and by placard. 40 V. c. 17, s. 40.

**41.** The Society shall at such meeting elect a President, two Vice-Presidents, and not more than nine other Directors, and the officers so elected shall elect, from amongst themselves or otherwise, a Secretary and a Treasurer (or a Secretary-Treasurer,) and the Society shall also elect two Auditors. 40 V. c. 17, s. 41. Election of officers.

**42.** The Secretary of each Electoral District Society shall, with the return of the delegate elected, as provided for in section twenty of this Act, also send within eight days after each annual meeting, a full list of the officers of the Society, with their respective post-office addresses. 40 V. c. 17, s. 42. Return of officers.

**43.** The meetings of the officers shall be held pursuant to adjournment, or be called by written notice given by authority of the President, or in his absence of the senior Vice-President, at least one week before the day appointed; and at any meeting five shall be a quorum. 40 V. c. 17, s. 43. Meetings, etc.

**44.** The officers of every Electoral District Society at any meeting called by written notice, as hereinbefore mentioned (in which notice the object of the meeting shall be specified) may make, alter and repeal by-laws and rules for the regulation of such Society and the carrying out of its objects. 40 V. c. 17, s. 44. Officers may make by-laws etc.

**45.** The said officers shall, in addition to the ordinary duties of management, cause to be prepared, and shall present at the annual meeting, a report of their proceedings during the year, in which shall be stated the names of all the members of the Society, the amount paid by each being set opposite to his name, the amount awarded in prizes to each kind of live stock, agricultural products, implements, domestic products or other objects respectively, together with such remarks and suggestions upon the Agriculture and Horticulture of the Electoral District, and the Arts and Manufactures therein, as the officers are enabled to offer. 40 V. c. 17, s. 45. Annual report.

**46.** There shall also be presented at the said annual meeting a detailed statement of the receipts and disbursements of the Society during the year, and also an analyzed statement, in which shall be shown the expenses of management under separate and distinct heads. 40 V. c. 17, s. 46. Annual accounts.

**47.** The said report and statement, if approved of by the meeting, shall be entered in the Society's Journal, to be kept for such purposes, and signed by the President or Vice-President, as being a correct entry; and a true copy of such report and an abstract of the analyzed statement, certified by the President or Secretary for the time being, shall be sent to the Bureau on or before the first day of March next following. 40 V. c. 17, s. 47. Entry of report. Copy to Bureau.

Electoral District Society to receive reports from Townships.

**48.** The several Electoral District Societies shall receive the reports of the Township Societies, and of the Horticultural Societies duly organized, as provided in section sixty-one, within their respective Districts; and shall transmit them to the Bureau, with such remarks thereon as will enable the Commissioner of Agriculture to obtain a correct knowledge of the progress of agricultural improvement in the Electoral District. 40 V. c. 17, s. 48.

Division of Electoral Districts.

**49.** When any Electoral District is divided into two or more Electoral Districts, it shall be necessary to organize a new Agricultural Society for each; and any property that may have been held by the Agricultural Society representing the Electoral District prior to such division, or the value thereof, shall be equitably apportioned or divided by three arbitrators or a majority of them, one to be appointed by the officers of the Society in each new Electoral District, and another arbitrator to be chosen by the arbitrators so appointed, or, in the event of the said arbitrators failing to choose such third arbitrator within ten days after being appointed, then the Senior County Judge residing in the District shall appoint such third arbitrator; and in cases where new Electoral Districts have been formed for the purpose of representation in the Legislative Assembly, by Townships taken from two or more Electoral Districts, then any property, real or personal, which originally belonged to the Electoral District Societies of such Electoral Districts, before the said Townships were taken therefrom, shall in like manner be equitably apportioned between such new Electoral District Society and each of the original Societies of the Electoral Districts out of which such new District has been formed. 40 V. c. 17, s. 49.

Act to apply to Electoral Districts to be hereafter formed.

**50.** The provisions of the sections of this Act applying to Agricultural Societies, with regard to grants and Electoral Districts, conditions of grants, &c., &c., shall extend to any new Electoral Districts to be hereafter formed in Ontario. 40 V. c. 17, s. 50.

#### TOWNSHIP SOCIETIES.

When and how Township Societies organized.

**51.** A Township Agricultural Society may be organized in each Township in which there is not one already organized, or in any two or more such Townships together, whenever a sufficient number of persons, not less than fifty when the number of rate-payers on the last revised assessment roll is two hundred or over, and not less than thirty when the number of rate-payers is less than two hundred, become members by signing a declaration in the form of Schedule B to this Act annexed, and paying each not less than one dollar to the funds of the Society for that year; and all persons thereafter paying each the sum of one dollar (or such other sum, not being more than two dollars, as the Society may by by-law fix) annually to the funds of the Society shall be members thereof; and a true

copy of the said declaration, certified by the President or Vice-President of such Society, shall be forthwith transmitted to the Secretary of the Society of the Electoral District within which such Township is situate. 40 V. c. 17, s. 51. Declaration.

**52.** The first meeting for the formation of a Township Society shall be called by the Reeve of the Township, or in the case of a Union of Townships, by the Reeves of all the uniting Townships; at which meeting the election of the officers mentioned in section fifty-five shall take place; and the Society so organized shall be deemed the Township or Union of Townships Society, and be entitled to share in the Government grant; and all subsequent annual meetings shall be held as provided in section fifty-five. 40 V. c. 17, s. 52. First meeting.

**53.** Each Township Society shall be legally known and designated by the name of the Township or Union of Townships in which it is situated, and there shall not be more than one such Society in any Township. Name of Society.

**2.** A Town or Village not in itself a separate Electoral District shall, for the purposes of this Act, be and be deemed to be a part of the Township in which such Town or Village is situate. 40 V. c. 17, s. 53. Towns and Villages.

**54.** Any Township Society lawfully organized as aforesaid, may at any regular meeting adopt a resolution, that the said Society is desirous of being incorporated; and upon filing with the Secretary of the Bureau of Agriculture and Arts the said resolution, and a certificate of the Secretary of the Electoral District Society with which such Township Society is connected, that it is the recognized Society of the Township which it professes to represent, such Society shall thenceforth be and become a body corporate, and shall have like powers with Electoral District Societies. 40 V. c. 17, s. 54. Incorporation of Township Societies.

**55.** The said Societies shall hold their annual meetings on the second Thursday in January of each year, and shall elect a President, a Vice-President, and not fewer than three, nor more than nine other Directors, and the officers so elected shall elect, from amongst themselves or otherwise, a Secretary and a Treasurer (or a Secretary-Treasurer); and the said Societies shall also elect two Auditors. 40 V. c. 17, s. 55. Annual meeting.  
Election of officers.

**56.** The said officers shall prepare and present at the annual meeting of the Society a report of their proceedings during the year, in the same manner as hereinbefore directed for Electoral District Societies, and containing information under the same heads, and shall transmit a true copy thereof, certified by the President or Vice-President, to the Secretary of the Electoral District Society with which such Society is connected, in time for the annual meeting thereof in January. 40 V. c. 17, s. 56. Annual report.



Where Town-  
ships divided.

**57.** In cases where part of a Township is in one Electoral District and part in another, the Township Society shall transmit a copy of its annual report to the Secretary of each such Electoral District Society, as provided for in the preceding section; and such Township Society shall also send to the respective Treasurers of the said Electoral District Societies a list of the subscriptions of its members, attested as in other cases provided for by section sixty-eight of this Act; and, based on such returns, shall receive from each of such Electoral District Societies its share of all legislative and other public grants, but in the proportion of fifty per cent. only of such returns, as compared with the returns of other Townships in the respective Electoral Districts.

2. In the case of a Union of Townships to form one Society, where one Township is in one Electoral District and the other in another Electoral District, then such Union Society shall report to, and do and be dealt with in all respects in the same manner as is herein provided for, in the case of a Township partly situated in one and partly in another Electoral District. 40 V. c. 17, s. 57.

Dissolution of  
union Town-  
ship Societies.

**58.** Where two or more Townships have united to form a Township Society, a majority of such of the members of such Society as reside in any one of the Townships comprising such Union, may, by writing, signed by such majority and addressed to the officers of such united Society, express their desire to separate, and may thereupon organize a new Society for such Township in the manner provided by sections fifty-one and fifty-two; and the former united Society shall thereupon become dissolved and cease to exist; and the assets of such Union Society shall be divided in manner provided by section forty-nine in regard to the assets of separating Electoral District Societies. 40 V. c. 17, s. 58.

How assets  
divided.

Power to sell  
lands.

**59.** Any Township Society holding land or buildings for the purpose of Agricultural Fairs or Exhibitions, may, subject to the approval of a meeting of the Society called for the purpose, (at which meeting only members of at least two years' standing shall be allowed to vote), sell, mortgage, lease, or otherwise dispose of the same. 40 V. c. 17, s. 59.

Powers as to  
lands.

**60.** Any Township Society, and Town or Village Municipality, that had, prior to the fourth day of March, one thousand eight hundred and sixty-eight, jointly purchased and held any lands or buildings for the purpose of Agricultural Fairs or Exhibitions, may continue jointly to hold such lands or buildings, or may sell, mortgage, lease or otherwise dispose of the same. 40 V. c. 17, s. 60.

## HORTICULTURAL SOCIETIES.

**61.** Any number of persons not less than fifty, in any City, Town, or Village, not being in itself constituted an Electoral District, and whether such Town or City is or is not separated from the County for municipal or other purposes, may organize and form themselves into a Horticultural Society, by signing a declaration in the form of Schedule B, to this Act annexed (but with the necessary alterations as to the name of the Society), and paying each not less than one dollar to the funds of the Society for that year; and all persons thereafter paying each the sum of one dollar (or such other sum, not being more than two dollars, as the Society may by by-law fix) annually to the funds of the Society, shall be members thereof; and such Society shall, except where it is otherwise expressly provided by this Act, have all the rights and privileges of, and be subject to the same obligations as, Township Agricultural Societies, as to reporting, and as to participating in the grants, to the Electoral District Societies of the Electoral Districts in which they are respectively situated. 40 V. c. 17, s. 61.

Formation of Horticultural Societies in Cities, Towns and incorporated Villages.

**62.** Such declaration shall be in duplicate, and one part thereof shall be written and signed on the first page or pages of a book to be kept by the Society, for recording the minutes of its proceedings during the first year of its existence, and the other part thereof shall be written and signed on a sheet of paper or parchment, and shall forthwith be sent by post to the Commissioner of Agriculture, who shall, as soon as may be after the receipt thereof, cause a notice of the formation of such Society to be inserted in the *Ontario Gazette*. 40 V. c. 17, s. 62.

Copy of declaration to be sent to the Commissioner.

Official notice of formation.

**63.** Upon the insertion in the *Ontario Gazette* of the notice of the formation of any such Society, it shall become a corporation for the objects and purposes hereinafter mentioned, by the name applied to it in such notice, which shall be the same as that in the declaration transmitted by such Society, and may acquire and hold, lease, mortgage and alienate property real and personal, but only for the purposes of such Society. 40 V. c. 17, s. 63.

Society to be a Corporation.

**64.** Every Horticultural Society incorporated under this or any former Act, may make by-laws and rules, not being contrary to the laws of this Province, or to this Act, prescribing the mode of admission of new members and election of officers, and otherwise regulating the administration of its affairs and property; provided always that no such Society shall join with any Agricultural Society except the recognized Society of the Township or Electoral District within which such Horticultural Society is situate. 40 V. c. 17, s. 64.

Power to make by-laws.

**65.** Every such Society shall hold its annual meeting on the second Thursday in January in each year, besides meetings at

Annual meeting.

Election of officers.

such other times as may be prescribed or provided for by its by-laws; and at such annual meeting, shall elect a President, a Vice-President, and, not fewer than three nor more than nine other Directors, and the officers so elected shall elect, from amongst themselves or otherwise, a Secretary and a Treasurer (or a Secretary-Treasurer), and the Society shall also elect two Auditors. 40 V. c. 17, s. 65.

Annual report.

**66.** The said officers shall prepare and present to the annual meeting of the Society, a report of their proceedings during the year, in the same manner as herein directed for Electoral District Agricultural Societies, and containing information under the same heads, save and except those which relate to Agriculture, the object and purpose of Horticultural Societies being the same as those of Agricultural, as hereinbefore mentioned, but with reference to Horticulture only; and the Secretary of the said Society shall transmit a true copy thereof to the Secretary of the Electoral District Society with which such Society is connected, properly certified, in time for the annual meeting thereof in January. 40 V. c. 17, s. 66.

#### GRANTS.

Grants to District Societies, and conditions thereof.

**67.** An Electoral District Society, so long as the number of its *bona fide* members is not less than eighty, having previously forwarded to the Commissioner of Agriculture a copy of its report and statements for the year then last past, as required by this Act, and transmitting to the Commissioner of Agriculture, on or before the first day of September in each year, an affidavit, (which may be in the form of Schedule C to this Act annexed, and may be sworn to before any Justice of the Peace), stating the amount subscribed for that year, and paid to the Treasurer of the Electoral District Society by the members thereof, together with the amounts returned to the said Treasurer of the Electoral District Society by the several Horticultural and Township Agricultural Societies of the said Electoral District, as provided in section sixty-eight of this Act, shall be entitled (subject to the limitations hereinafter mentioned), to receive a sum, to be paid out of any unappropriated moneys in the hands of the Treasurer of the Province, equal to three times the amount certified by the said affidavit of the Treasurer of such Electoral District Society.

Proviso.

2. But no grant shall be made unless the amount so certified by the affidavit of the said Treasurer is one hundred and thirty dollars or upwards.

Proviso.

3. The City of Toronto shall not receive more than five hundred and fifty dollars in any year; and the following Electoral Districts, viz:—The City of Kingston, the City of Hamilton, the City of London, the City of Ottawa and the Electoral District of Cornwall, shall not receive more than three hundred and fifty dollars in any year.

4. And the whole amount to any Electoral District Society shall not exceed seven hundred dollars in any year. 40 V., c. 17, s. 67. Grant not to exceed \$700.

68. Every Township or Horticultural Society coming within the provisions of this Act, and sending a report of its proceedings to the Electoral District Society, as hereinbefore required, shall be entitled to a share of the grant to the Electoral District Society, in proportion to the amount subscribed and paid by the members of the Township or Horticultural Society; and a list thereof, stating the amount paid by each member, shall be sent to the Treasurer of the Electoral District Society, attested by an affidavit made by the Treasurer of such Township or Horticultural Society, in like manner as provided in the case of the Treasurer of Electoral District Societies, in section sixty seven of this Act (which affidavit may be in the form of Schedule D, to this Act annexed), on or before the first day of August in each year; and the Treasurer of the Electoral District Society shall pay over to such Township or Horticultural Society its share of the public grant, which shall be in proportion to the amount subscribed by other Township and Horticultural Societies of the Electoral District, as soon as the said grant is received by the Electoral District Society. 40 V. c. 17, s. 68. Allowance to Township Societies from District grant, and conditions thereof.  
  
Affidavit of Township Treasurer.

69. Three-fifths, and no more, of the sum so received by any Electoral District Society, shall be subject to division among Township and Horticultural Societies. Only three-fifths to be divided.

2. The declaration mentioned in sections fifty-one and sixty-one of this Act, shall be deemed a sufficient report in the first year in which any Township or Horticultural Society has been organized; and no Township or Horticultural Society shall thus receive more than three times the amount so deposited by it as aforesaid, nor more than one-fifth of the entire grant to the Electoral District Society. 40 V. c. 17, s. 69,

70. Nothing in this Act contained shall be construed as admitting any member of a Township Society, in virtue of his subscription thereto, and without further subscription to the Electoral District Society, to any of the privileges of a member of such Electoral District Society, except where the Electoral District Exhibition is held within the limits of a Township, as mentioned in section seventy-three of this Act. 40 V. c. 17, s. 70. Proviso.

#### EXHIBITIONS.

71. The Exhibition of the Electoral District Society shall be held whenever the majority of the officers, or of a quorum thereof, think fit, giving due and public notice thereof, within the limits of the Electoral District, or of any adjoining Elec- Where Exhibitions of District Society held.



toral District or Township with the Society of which they may unite their funds as hereinafter mentioned.

2. Whenever the officers of any Electoral District or Township Society have by by-law or resolution fixed upon a place or places for holding the Exhibition or Exhibitions of such Society for any year or years, then the place or places for holding such Exhibition or Exhibitions shall not be changed except by the vote of a majority of the members of such Society of at least two years standing, present at a special meeting called by the officers of such Society for the purpose of considering the proposed change,

3. At least two weeks previous notice of such meeting shall be given by advertisement in a newspaper published in the Electoral District, and by placard.

4. Such meeting shall be at the hour of nine o'clock in the forenoon ; and if a poll is demanded, the same shall be opened at one o'clock in the afternoon and closed at six o'clock in the afternoon, after which time no votes shall be taken ; and the presiding officer shall thereupon declare the result of the poll. 40 V. c. 17, s. 71.

Union of Dis-  
trict and  
Township  
Societies.

72. Any two or more Electoral District Societies, or an Electoral District Society and any Township or Horticultural Society or Societies, or any two or more Township or Horticultural Societies, or the Society of a City Electoral District and any Township or Horticultural Society or Societies adjoining such City Electoral District, may, by agreement between the officers, or a majority of the officers, of each such Society, unite their funds, or any portion thereof, for the erection of suitable buildings in which to exhibit articles of produce or manufacture, or works of art, and for annual or extra Exhibitions, or for ploughing matches, or for any other purpose likely to promote the welfare of any one or more Electoral Districts or Townships, in Agriculture, Horticulture, Arts and Manufactures, and may acquire by purchase or lease, and hold, sufficient land for this purpose from time to time, and may, subject to the approval of a meeting of the Society, called for the purpose, at which meeting only members of at least two years' standing shall be allowed to vote, sell, mortgage, lease or otherwise dispose of the same. 40 V. c. 17, s. 72.

Township  
Societies  
Exhibition.

73. The Exhibitions of any Township Agricultural Society (if not united with any other Society) shall be held at such place as shall afford sufficient accommodation for such Exhibitions ; but no separate Township Agricultural Exhibition shall be held within five miles of the place at which the Electoral District Exhibition is held for any year in the same Township ; but the Township Agricultural Society may unite with the Electoral District Society, and may merge their funds

with those of the Electoral District Society for that year, and, if so merged, the members of such Township Society shall be entitled to all the privileges of members of the Electoral District Society at the Exhibition, and the President, Vice-President and Directors of such Township Society shall be co-Directors with the Directors of the Electoral District Society, for the conducting and management of such Exhibitions, save and except as to the place at which such Exhibitions shall be held.

2. The provisions of this section shall not extend to Horticultural Societies. Proviso. 40 V. c. 17, s. 73.

#### THE ASSOCIATION OF MECHANICS' INSTITUTES.

**74.** The Association heretofore incorporated and known as the "Association of Mechanics' Institutes of Ontario," shall continue to be a body corporate, and may make by-laws for the admission of Associate Institutes, and for any purposes consistent with the objects of Mechanics' Institutes, and not contrary to the provisions of this Act or the general laws of the Province. Association of Mechanics' Institutes. 40 V. c. 17, s. 74.

**75.** Such Association shall hold its annual meeting at the place and during the same time as the Exhibition of the Agricultural and Arts Association is being held, in each and every year; and a report of the proceedings of the Association shall be made to the Commissioner of Agriculture within fourteen days after the holding of such annual meeting. Annual meeting. 40 V. c. 17, s. 75.

**76.** Each Associate Institute shall be represented at the annual meeting by its President and Secretary, or by any two members that such Institute may appoint in place of its President and Secretary. Representation. 40 V. c. 17, s. 75.

#### MECHANICS' INSTITUTES.

**77.** Any Mechanics' Institute incorporated under chapter seventy-two of the Consolidated Statutes of Canada, or chapter one hundred and sixty-eight of these Revised Statutes or by a special Act of Incorporation, having established a reading-room, or having evening classes organized for the imparting of practical instruction to its pupils, or having established a library of books on one or more of the following subjects, namely:—Mechanics, Manufactures, Agriculture, Horticulture, Philosophy, Science, the Fine and Decorative Arts, History, Travels, Poetry, and Biography, shall be entitled to receive from unappropriated moneys in the hands of the Treas- Aid to Mechanics' Institutes. Rev. Stat. c. 168.

Proviso. surer of the Province, for the purpose of aiding in such reading-room, class instruction, or library, a sum not to exceed four hundred dollars in any one year: Provided that a sum equal to one-half the amount to be so paid by the Government is locally contributed or appropriated, or has been expended by such Institute, during the current year for such specific object or objects; Provided also, that any Mechanics' Institute which during four months in any year, has in operation classes in which instruction is given by competent teachers in Writing, English Grammar, Arithmetic, Book-keeping, Mensuration, Freehand, Architectural and Mechanical Drawing, or any of these four subjects, shall be entitled to fifty dollars additional for each fifty pupils over and above two hundred;

Proviso. 2. Not more than one-fourth the total amount so received from unappropriated moneys in the hands of the Treasurer of the Province, and so locally contributed, shall be expended for the purpose of such reading-room;

Affidavit. 3. The amount of such local contribution or appropriation shall be attested by an affidavit (which may be in form of Schedule E to this Act annexed), made by the Secretary or Treasurer of such Institute as may apply for aid, not later than the first day of November in each year. 40 V. c. 17, s. 77.

Institute to pay five per cent. of aid to Association of Mechanics' Institutes and send report to the Commissioner.

78. Each Institute so receiving aid shall contribute and pay over to the Treasurer of the "Association of Mechanics' Institutes of Ontario" five per centum thereof; and such Institute shall also cause to be forwarded to the Commissioner of Agriculture and to the Secretary of the Association of Mechanics' Institutes, not later than the first day of July next after the end of any Institute year in which a Government grant has been made, a properly certified copy of its annual report for the Institute year in which such aid has been granted, in which shall be shown, upon schedules to be furnished by the Commissioner, that the specified contribution, appropriation or expenditure, and also the Legislative aid received by such Institute for that year, has been disbursed in accordance with the provisions of the preceding section. 40 V. c. 17, s. 78.

When Mechanics' Institutes may have benefit of this Act.

79. No Mechanics' Institute hereafter established shall be entitled to participate in the grants provided for by sections seventy-seven and seventy-eight of this Act, until the year following its formation, nor unless notice of its formation has been given to the Commissioner of Agriculture prior to the first day of December of the year preceding that for which the first application for an annual grant is made. 40 V. c. 17, s. 79.

Certain Institutes excluded from Government grant.

80. No Mechanics' Institute organized after the first day of January, one thousand eight hundred and seventy-two, shall be entitled to share in the Government grant, except such as

are organized in Cities, Towns and Villages; and not more than one such Institute in any City (or Electoral District thereof), Town or Village, shall share in such grant. 40 V. c. 17, s. 80.

**81.** The business year of every Mechanics' Institute claiming a grant under this Act shall end on the first day of May in each year; and every such Institute shall hold its annual meeting and submit its annual report in May in each year. 40 V. c. 17, s. 81. Business year.

**82.** It shall be the duty of the County, City or Town Inspector of Schools to inspect every Mechanics' Institute in his County, City or Town, at least once in every year, and to annually audit the financial affairs of said Institute, and, before the first day of July in each year, to report to the Commissioner of Agriculture the condition and standing of each such Mechanics' Institute: but no Inspector shall be appointed an officer of any Institute whose accounts he may have to audit. 40 V. c. 17, s. 82. School Inspector to inspect, &c., Mechanics' Institutes. Proviso.

**83.** No Mechanics' Institute shall be entitled to share in the Government grant unless the Inspector of Schools reports to the Commissioner of Agriculture that such Mechanics' Institute has duly complied with all the provisions of this Act, and of the several Acts relating to Mechanics' Institutes. 40 V. c. 17, s. 83. When Institutes disentitled to Government grant.

**84.** It shall be lawful for the Lieutenant-Governor in Council to direct the payment out of the Consolidated Revenue, of a sum of not less than ten dollars to each Inspector, for every Mechanics' Institute which he inspects and reports upon to the Commissioner of Agriculture. 40 V. c. 17, s. 84. Fee to Inspector.

#### THE ONTARIO SOCIETY OF ARTISTS.

**85.** The Society now existing and known as the "Ontario Society of Artists" may organize and form themselves into a Society comprising not less than twenty-five members, and paying an annual subscription of not less than five dollars each, to be known as "The Ontario Society of Artists," and shall have power to adopt a constitution and make by-laws for the admission of members and for its guidance and proper management, and for the conduct and management of the Canadian Art Union and the promotion of any objects consistent with the study of Art and its practical bearing upon the interests of the Province of Ontario, and not inconsistent with the laws of the Province; and on filing a copy of such constitution and by-laws with the Commissioner of Agriculture and Arts, such Society shall become a body corporate under this Act. 40 V. c. 17, s. 85. Society of Artists.

**86.** Such Society, so long as the number of its *bona fide* members is not less than twenty-five, shall be entitled to receive Grant of not less than \$500



from unappropriated moneys in the hands of the Treasurer of the Province, a sum of not less than five hundred dollars in any one year. 40 V. c. 17, s. 86.

Annual meeting.

**87.** The said Society shall hold an annual meeting in each year, at such time and place as the said Society may appoint, not being later than the thirtieth day of September, and the retiring officers shall at such meeting present a full report of their proceedings and of the proceedings of the Society, and a detailed statement of its receipts and expenditure for the previous year; and the Society shall at such meeting elect a President, a Vice-President, and such other officers as the constitution and by-laws of the Society may provide to be elected; and the Society shall also elect two Auditors. 40 V. c. 17, s. 87.

Election of Officers.

Report to Commissioner.

**88.** A copy of the annual report of its proceedings, and a statement of receipts and expenditure and a list of the officers elected, and also a report of such information as the Society may have been able to obtain on the progress of Art in the Province, shall be sent to the Commissioner of Agriculture within forty days after the holding of such annual meeting. 40 V. c. 17, s. 88.

#### THE FRUIT GROWERS' ASSOCIATION.

Fruit Growers' Association.

**89.** The Association now existing, and known as "The Fruit Growers' Association of Ontario" shall continue to be a body corporate, to comprise not less than twenty-five members, and may make by-laws and regulations for its guidance and proper management, not being contrary to the provisions of this Act or the general laws of the Province. 40 V. c. 17, s. 89.

Grant not to exceed \$1000.

**90.** Such Association, so long as the number of its *bona fide* members is not less than fifty, and so long as it complies with the provisions of this Act, shall be entitled to receive from unappropriated moneys in the hands of the Treasurer of the Province, a sum not exceeding one thousand dollars in any one year, provided that the Secretary of the Association shall, on or before the first day of September in each year, transmit to the Commissioner of Agriculture an affidavit, which may be sworn to before any Justice of the Peace, stating the number of members who have paid their subscriptions for the current year, and the total amount of such subscriptions. 40 V. c. 29, s. 90.

Annual meeting.

**91.** The said Association shall hold an annual meeting at the place and during the same time as the Exhibition of the Agricultural and Arts Association is being held, in each and every year, and the retiring officers shall at such meeting present a full report of their proceedings, and of the proceedings of the Association, and a detailed statement of its receipts and expenditure for the previous year; and the Association shall at such meeting elect a President, a Vice-President, and thirteen

Election of officers.

Directors, (one for each of the thirteen Agricultural Divisions mentioned in Schedule A, and within which Division he shall be a resident), and the officers so elected shall elect, from amongst themselves or otherwise, a Secretary and a Treasurer (or a Secretary-Treasurer); and the Association shall also elect two Auditors. 40 V. c. 17, s. 91.

**92.** The officers (a majority of whom shall form a quorum) shall have full power to act for and on behalf of the Association; and all grants of money and other funds of the Association shall be received and expended under their direction, subject, nevertheless, to the by-laws and regulations of the Association. 40 V. c. 17, s. 92. Powers of officers.

**93.** A copy of the annual report of its proceedings, and a list of the officers elected, and also such information as the Association may have been able to obtain on the subject of fruit culture in the Province, shall be sent to the Commissioner of Agriculture within forty days after the holding of such annual meeting. 40 V. c. 17, s. 93. Report to Commissioner.

#### THE ENTOMOLOGICAL SOCIETY.

**94.** The Society now existing and known as "The Entomological Society of Ontario," shall continue to be a body corporate, to comprise not less than twenty-five members, paying an annual subscription of not less than one dollar each, and shall have power to make by-laws for the admission of members, and for its guidance and proper management, and for the promotion of any objects consistent with the study of Entomology, and its practical bearing upon the agricultural and horticultural interests of the Province, and not inconsistent with the laws of the Province. 40 V. c. 17, s. 94. Entomologica Society.

**95.** Such Society, so long as the number of its *bona fide* members is not less than fifty, shall be entitled to receive from unappropriated moneys in the hands of the Treasurer of the Province, a sum not to exceed seven hundred and fifty dollars in any one year, on the like conditions as are provided in the case of the Fruit Growers' Association of Ontario, in section ninety of this Act. 40 V. c. 17, s. 95. Aid to Society

**96.** The said Society shall hold an annual meeting in every year, at such time and place as the said Society may appoint, not being later than the thirtieth day of September; and the retiring officers shall at such meeting present a full report of their proceedings and of the proceedings of the Society, and a detailed statement of its receipts and expenditure for the previous year; and the Society shall at such meeting elect a President, a Vice-President, and not fewer than three nor more than five Directors, and the officers so elected shall Meetings and election of officers, &c.

elect, from amongst themselves or otherwise, a Secretary and Treasurer (or a Secretary-Treasurer); and the Society shall also elect two Auditors. 40 V. c. 17, s. 96.

Report to  
Commissioner

**97.** A copy of the annual report of its proceedings, and a list of the officers elected, and also a report of such information as the Society may have been able to obtain on the subject of insects beneficial or injurious to the farm and the garden in Ontario, with such appropriate illustrations as the Society may have been able to obtain, shall be sent to the Commissioner of Agriculture within forty days after the holding of such annual meeting. 40 V. c. 17, s. 97.

#### THE DAIRYMEN'S ASSOCIATIONS.

Dairymen's  
Associations.

**98.** There shall be an Association to be known as "The Dairymen's Association of Eastern Ontario," which shall be composed of Agricultural Divisions numbered one, two, three, four, five, and six; and there shall also be an Association to be known as "The Dairymen's Association of Western Ontario," which shall be composed of Agricultural Divisions numbered seven, eight, nine, ten, eleven, twelve, and thirteen; and each such Association shall be a body corporate, and shall each comprise not less than eighty members, each paying an annual subscription of not less than one dollar, and may make by-laws, rules, and regulations not being contrary to this Act, or to the general laws of this Province, for its guidance and management. 40 V. c. 17, s. 98.

Grants not to  
exceed \$1,000.

**99.** Each such Association, so long as the number of its *bona fide* members is not less than one hundred, shall be entitled to receive from unappropriated moneys in the hands of the Treasurer of this Province, a sum not to exceed one thousand dollars in any one year, on the like conditions as are provided in the case of the Fruit Growers' Association of Ontario, in section ninety of this Act. 40 V. c. 17, s. 99.

Property to be  
divided.

**100.** The Society heretofore known as "The Dairymen's Association of Ontario" shall, as soon after the passing of this Act as may be practicable, pay all the liabilities due by the said Association; and any property, moneys, or other assets held by the said Association, or the value thereof, shall be equitably apportioned or divided between the Dairymen's Association of Eastern Ontario and the Dairymen's Association of Western Ontario, by three arbitrators or a majority of them, one to be appointed by the officers of the Eastern and one by the officers of the Western Association, and another to be chosen by the two arbitrators so appointed, or, in the event of the said two arbitrators failing to choose such third arbitrator within thirty days after their appointment, then the Commissioner of Agriculture shall appoint such third arbitrator. 40 V. c. 17, s. 100.

**101.** Each of such Associations shall hold an annual meeting, at such time and place as may be determined upon by any by-law adopted for the purpose of determining the time and place for holding such meeting; and each Association shall at such annual meeting elect a President and two Vice-Presidents, and shall also elect one Director from each of the Agricultural Divisions included in such Association's limits; and the officers and Directors so elected shall elect from among themselves, or otherwise, a Secretary and a Treasurer (or a Secretary-Treasurer), and each Association shall elect two Auditors. 40 V. c. 17, s. 102 (1). Annual meeting.  
Election of officers.

**102.** And at each such annual meeting the retiring officers shall present a full report of their proceedings, and of the proceedings of the Association, and a detailed statement of its receipts and expenditure for the previous year; and a copy of said report and statement of receipts and expenditure, and a list of the officers elected, and also such general information on the subject of dairies and dairy products, in this Province and elsewhere, as each Association may have been able to obtain, shall be sent to the Commissioner of Agriculture within forty days after the holding of such annual meeting. 40 V. c. 17, s. 102 (2). Report to Commissioner.

**103.** The said Associations shall each hold annually a Cheese and Butter Fair or Exhibition, at such times and places as may be determined upon by the officers and Directors of the respective Associations. 40 V. c. 17, s. 103. Cheese and Butter Fair.

#### GENERAL PROVISIONS.

**104.** The Council or Board of Directors of any Association or Society organized under this Act, on being made aware of any fraud having been committed by any member or exhibitor, in the entry of any stock or goods in competition for prizes at any Exhibition, shall have the power of withholding the payment of any prizes that may have been awarded by the Judges to such members or exhibitors, on such fraudulent or any other entries made at any such Exhibition. 40 V. c. 17, s. 104. Frauds at Exhibitions.

**105.** All persons not under eighteen years of age, who have paid the membership subscription for the year then next ensuing, to any Society organized under this Act, shall have the right of voting at the election of officers, and on all other questions submitted to the annual meetings of such Societies, which apply solely to the business of such ensuing year; and all persons whose names are recorded on the books of any such Society as legal members thereof under this Act, shall have the right of voting on all other questions submitted to such annual meetings. 40 V. c. 17, s. 105. Right of voting.



Payment of  
subscriptions  
after poll  
opened not to  
entitle to vote

**106.** No membership subscriptions for the ensuing year, paid after the President or presiding officer has declared the poll open for the election of officers, shall entitle any member to vote for such officers, or shall render him eligible for election as an officer, nor, except in the case of the City and Town Electoral District and Horticultural Societies, shall any votes be received earlier than one o'clock in the afternoon nor later than six o'clock in the afternoon of the same day. 40 V. c. 17, s. 106.

Vacancies.

**107.** In the event of any officer of any Agricultural or other Society or body subject to the provisions of this Act, dying or resigning office during the time for which he has been elected, it shall be the duty of the remaining officers and they are hereby empowered, to nominate and appoint a fit and proper person to fill the office for the unexpired term of the person so dying or resigning as aforesaid; but in the event of the remaining officers being insufficient to form a quorum, or if for any reason a quorum cannot be obtained, then persons to fill the vacant offices shall be elected in manner provided in the next section. 40 V. c. 17, s. 107.

Where election  
illegal and  
void.

**108.** In the event of an election of any officers of any Association, Council, Society or other body coming within the provisions of this Act, not being held at the time or place herein directed, or being for any reason illegal and void, then the persons in office at the time when such election should have been legally held shall continue to be, and shall be deemed to be, the officers of such Association, Council, Society or body, until their successors are legally appointed; and, in the event of any such non-election, or illegal election, a special meeting of the members of such Association, Council, Society or other body, shall be called as soon as practicable, for the election of such officers; such meeting to be called (in the manner provided in section forty in the case of the annual meeting of an Electoral District Society) by the President, or in his absence or on his neglect by the Vice-President, or in the absence or on the neglect of the President and Vice-President, then by any three members of the Association, Council, Society or body; and at such meeting the election of officers shall take place, and the persons elected shall thenceforth, until their successors are appointed, be and be deemed to be the officers of such Association, Council, Society or body. 40 V. c. 17, s. 108.

Majority of  
officers to be  
residents.

**109.** The majority of the officers of Electoral District and Township Agricultural Societies, and of Horticultural Societies, shall be residents of the Electoral District or Municipality which such Society represents; but the membership of any such Society may extend to other Electoral Districts or Municipalities. 40 V. c. 17, s. 109.

**110.** Every delegate from a Society or Institute, to any Association or Council of an Association, under this Act, whether he be such by virtue of his office or has been appointed thereto by special resolution, shall at the annual (or first) meeting of such Association or Council for that year, furnish a certificate, signed by the President and Secretary, and sealed with the seal of the Society or Institute he professes to represent, showing that he has been duly appointed a delegate of such Society or Institute; and such certificate may be in the form of Schedule F. to this Act annexed. 49 V. c. 17, s. 110.

Delegates to  
furnish certi-  
ficates.

**111.** The Lieutenant-Governor shall issue his warrant in favour of the Agricultural and other Societies entitled to grants under this Act, to the amount of the whole appropriation required, as certified by the Commissioner of Agriculture; and the said Commissioner shall cause to be paid over to the Electoral District and other Societies the public grants to which they are respectively entitled. 40 V. c. 17, s. 111.

Commissioner  
to pay grants.

**112.** Any Electoral District or incorporated Township Society, or the Municipal Council of any County or Township in Ontario, may purchase and hold land for the purpose of establishing a School Farm, to instruct pupils in the science and practice of Agriculture; and any such Society and any Municipal Council may purchase and hold such School Farm conjointly or otherwise, and may, conjointly or otherwise, make all necessary rules and regulations for the management thereof; and may sell, mortgage, lease or otherwise dispose of the same.

Society may  
purchase land  
for School  
Farm.

2. Not more than two hundred acres of land shall be so held by any such Society or Council, whether conjointly or otherwise. 40 V. c. 17, s. 112.

Proviso.

#### MUNICIPAL AID TO AGRICULTURAL AND OTHER SOCIETIES.

**113.** The Municipal Council of any City, Town, Village, County or Township in this Province, may grant money or land in aid of the Agricultural and Arts Association, or of any duly organized Agricultural or Horticultural Society, or incorporated Mechanics Institute, coming within the provisions of this Act, being within the limits of the Municipality, or within any adjoining Municipality; and any such grants heretofore made shall be held to be and to have been legally made. 40 V. c. 17, s. 113. See also *Rev. Stat. c. 174, s. 454 (4)*.

Municipalities  
may grant  
land or money  
in aid of pur-  
poses of this  
Act.

#### KEEPING THE PEACE AT EXHIBITIONS.

**114.** Any Justice of the Peace having jurisdiction in any City, Town, Village or Township, wherein a Fair or Exhibition may

Justices of  
the Peace may

appoint police-  
men, &c.

be held, shall, on the request of the Council of the Agricultural and Arts Association, or of the President or Executive Committee of any Agricultural or Horticultural Society, appoint as many policemen or constables as may be required, at the expense of the said Association or of such Society, said policemen or constables to be named by such Association or Society, whose duty it shall be to protect the property of such Association or Society within the Exhibition grounds, and to eject all persons who may be improperly within the grounds, or who may behave in a disorderly manner, or otherwise violate any of the rules or regulations of such Association or Society. 40 V. c. 17, s. 114.

Penalty for  
obstructing  
officers or gain-  
ing admission  
contrary to  
rules.

**115.** If any person wilfully hinders or obstructs the officers or servants of the Agricultural and Arts Association, or of any Agricultural or Horticultural Society, in the execution of their duty, or gains admission to the said grounds contrary to the rules of such Association or Society, he shall be liable to a fine of not less than one nor more than twenty dollars; said fine to be enforced and collected as fines are usually collected, and to be paid over to such Association or Society for its use and benefit; and in default of payment the said offender shall be imprisoned in the Common Gaol for a period of not more than thirty days. 40 V. c. 17, s. 115.

Gambling, &c.  
to be prevent-  
ed.

**116.** The officers of any such Association or Society may by their rules and regulations prohibit and prevent all kinds of gambling, theatrical, circus, or mountebank performances, exhibitions, or shows, and also regulate or prevent the huckstering or trafficking in fruits, goods, wares, or merchandize, on the Exhibition grounds, or within three hundred yards thereof; and any person who, after due notice of such rules and regulations, violates the same, shall be liable to be removed by the officers, policemen, or constables of said Association or Society, and be subject to the penalty prescribed by the next preceding section. 40 V. c. 17, s. 116.

Penalty.

Horse-racing  
prohibited  
during Exhibi-  
tions.

**117.** It shall not be lawful to carry on any horse-racing during the days appointed for holding any Exhibition by the Agricultural and Arts Association, or by any Electoral District Society, within five miles of the place of holding the same.

Penalty.

2. Any person who is guilty of a violation of this section shall be liable, upon summary conviction before a Justice of the Peace, to a fine not exceeding fifty dollars, or imprisonment in the Common Gaol of the County for a period not exceeding thirty days. 40 V. c. 17, s. 117.

---

### SCHEDULE A.

(Section 19.)

## AGRICULTURAL DIVISIONS.

1. Stormont, Dundas, Glengarry, Prescott and Cornwall.
2. Lanark, Renfrew, City of Ottawa, Carleton and Russell.
3. Frontenac, City of Kingston, Leeds, Grenville and Brockville.
4. Hastings, Prince Edward, Lennox and Addington.
5. Durham, Northumberland, Peterborough and Victoria (including Haliburton).
6. York, Ontario, Peel, Cardwell, and City of Toronto.
7. Wellington, Waterloo, Wentworth, Halton, Dufferin, and City of Hamilton.
8. Lincoln, Welland, Haldimand, and Monck.
9. Elgin, Brant, Oxford and Norfolk.
10. Huron, Bruce and Grey.
11. Perth, Middlesex, and City of London.
12. Essex, Kent and Lambton.
13. Algoma, Simcoe, Muskoka and Parry Sound.

### SCHEDULE B.

(Sections 35, 51, and 61.)

### DECLARATION OF ASSOCIATION.

We whose names are subscribed hereto, agree to form ourselves into a Society, under the provisions of "*The Agriculture and Arts Act*," to be called the Electoral District (or Township), Agricultural (or Horticultural) Society of the Electoral District ( or Township or City or Town or incorporated Village) of \_\_\_\_\_; and we hereby severally agree to pay to the Treasurer the sums opposite our respective names; and we further agree to conform to the By-laws and Rules of the said Society.

NAMES.	Q	QTS.



## SCHEDULE C.

(Section 67.)

AFFIDAVIT AS TO AMOUNT OF LOCAL CONTRIBUTIONS TO DISTRICT SOCIETY.

COUNTY OF \_\_\_\_\_ }  
 To Wit: \_\_\_\_\_ }

I, A. B., of the (Township) of \_\_\_\_\_, Treasurer of the Electoral District Agricultural Society of \_\_\_\_\_, make oath and say that the sum of \_\_\_\_\_ has been reported to me by the Treasurers of the Township Agricultural Societies and of the Horticultural Societies of the said Electoral District, under oath, as provided for in section sixty-eight of "*The Agriculture and Arts Act*," as and for the members' subscriptions for this year; and that the sum of \_\_\_\_\_ has been paid into my hands, as subscriptions for this year by members of the said Electoral District Society; and that the said sums amount in the whole to the sum of \_\_\_\_\_; and that the amounts received as subscriptions to the Electoral District Society now remain in my hands, or have already been disposed of according to law.

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 187 \_\_\_\_\_ }  
 C. D., \_\_\_\_\_ } A. B.  
*Justice of the Peace for the County of \_\_\_\_\_* }

40 V. c. 17 Sched. C.

## SCHEDULE D.

(Section 68.)

AFFIDAVIT AS TO LOCAL CONTRIBUTIONS TO TOWNSHIP, &amp;c., SOCIETY.

COUNTY OF \_\_\_\_\_ }  
 To Wit: \_\_\_\_\_ }

I, A. B., of the Township of \_\_\_\_\_, Treasurer of the Agricultural (or Horticultural) Society of the (Township) of \_\_\_\_\_, make oath and say that the sum of \_\_\_\_\_ has been paid into my hands, as and for the members' subscriptions for this year, in accordance with the list herewith sent to the Treasurer of the Electoral District Society (or to the Commission of Agriculture and Arts as the case may be); and that the said sum is now in my hands, or has already been disposed of according to law.

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 187 \_\_\_\_\_ }  
 C. D., \_\_\_\_\_ } A. B.  
*Justice of the Peace for the County of \_\_\_\_\_* }

40 V. c. 17 Sched. D.

### SCHEDULE E.

(Section 77.)

AFFIDAVIT AS TO LOCAL CONTRIBUTIONS, &C., TO MECHANICS' INSTITUTE.

COUNTY OF \_\_\_\_\_ } I, A. B., of  
To Wit : } Secretary or Treasurer of the  
Mechanics' Institute, make oath and say that the sum of  
\_\_\_\_\_ has been contributed, appropriated, or expended, for the object of a read-  
ing room and evening class instruction, (and for the purchase of books for  
its library, or for one or more of these objects), for the current year, as pro-  
vided for, and on the conditions named in section seventy-seven of "*The  
Agriculture and Arts Act.*"

Sworn before me, this  
day of \_\_\_\_\_, 187\_\_\_\_ }  
A. D., } A. B.  
*Justice of the Peace for the Co. of* }

40 V. c. 17 Sched. E.

### SCHEDULE F.

(Section 110.)

CERTIFICATE OF APPOINTMENT OF DELEGATE.

We, the President and Secretary of the Electoral District Agricultural Society (or Horticultural Society, Mechanics' Institute or other Society, as the case may be) of the Electoral District (City or Town or incorporated Village) of \_\_\_\_\_, hereby certify that \_\_\_\_\_, President (or other officer, as the case may be) of the said Society (or Institute), has been duly appointed by the said Society (or Institute) to represent it at the approaching Annual (or other) Meeting of the Agricultural and Arts (or other) Association of Ontario, at \_\_\_\_\_, in the County of \_\_\_\_\_, on the day of next \_\_\_\_\_.

Dated this            day of            , A. D. 187

*President.*

Secretary.

[L.S.]

40 V. c. 17, *Sched. F.*

## 6. *Statistics.*

CHAP. 36.—Registration of Births, Marriages and Deaths, p. 376.

### CHAPTER 36.

#### An Act respecting the Registration of Births, Marriages and Deaths.

Interpretation, s. 1.	Registrar-General to arrange returns, s. 18.
Provincial Secretary to be Registrar-General, s. 2.	Searches or extracts may be made, s. 19.
Registration Divisions, ss. 3, 4.	Registrar-General to publish a general report of returns, s. 20.
Books and forms to be furnished, s. 5.	Lieutenant-Governor in Council may make rules as to obtaining statistical information, s. 21.
Annual returns to be made, s. 6.	Inspection of Registration Offices 22.
Clergymen to keep registry of baptisms, marriages and deaths, s. 7.	Penalty for false statements in reports, &c., s. 23.
Registration of Births, ss. 8-10.	Penalty for neglect to report, s. 24.
Registration of Marriages, s. 11.	Procedure on complaints, 25.
Registration of Deaths, ss. 12-15.	Fees of Registrars, s. 26.
Correction of errors in entries, s. 16.	
Penalty for Division Registrar failing to perform duty, s. 17.	

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Interpretation  
of the word  
"occupier."

**1.** The term "occupier," used in the eighth and twelfth sections of this Act, shall be construed to include the Master, Governor, Keeper, Warden or Superintendent of a gaol, prison, penitentiary, lunatic asylum, poor asylum, hospital or other public or private charitable institution. 39 V. c. 2, s. 25.

Prov. Secretary to be Registrar-General.

**2.** The Provincial Secretary shall be, for the purposes of this Act, the Registrar-General of the Province. 39 V. c. 2, s. 1.

Registration Divisions and Division Registrars.

**3.** For the purposes of this Act, each City, Town, incorporated Village, Township or Union of Townships, shall be a Registration Division; and the Clerks of such Municipalities shall be, Division Registrars; but this section shall not apply to any Municipality within any of the Districts referred to in

the next succeeding section. 39 V. c. 2, s. 2; 40 V. c. 7, *Sched. A.* (23).

4. The Lieutenant-Governor in Council may appoint such Division Registrars in the existing Districts of Algoma, Nipissing and Thunder Bay, and also any Territorial Districts hereinafter formed, and by Order in Council make such Rules and Regulations as may be necessary to secure a correct record of the births, marriages and deaths occurring therein until municipal organizations are formed. 39 V. c. 2, s. 3; 40 V. c. 7, *Sched. A.* (24)

Registrars and regulations in Algoma, Nipissing, Thunder Bay and other districts.

5. The Registrar-General shall procure the necessary books and forms for the Division Registrars, and the same shall be prepared according to Schedules A, B and C, appended to this Act, with such additional columns as may from time to time be added thereto by the Lieutenant-Governor in Council, in order to the procurement of correct statistical information; and he shall distribute the same to the several Division Registrars, and the costs and expenses of such books and forms, and the expenses attendant upon the distribution thereof, shall be paid out of the Consolidated Revenue Fund of the Province. 39 V. c. 2, s. 4.

Books and forms for Registrars.

6. The Division Registrars shall receive the books and forms sent by the Registrar-General, and keep the same in a place of safety; make all entries therein as hereinafter required in this Act; and shall, on or before the fifteenth days of January and July in each and every year, make returns to the Registrar-General of the forms containing the original entries, certified under his hand, of the births, marriages and deaths of the previous six months. 39 V. c. 2, s. 5.

Custody, entries and returns in the books.

7. Every clergyman, teacher, minister or other person authorized by law to baptize, marry or perform the funeral service in Ontario, shall keep a registry showing the persons whom he has baptized or married, or who have died within his cure and belonging to his congregation. C. S. C. c. 33, s. 32.

Clergymen, &c., to keep a registry of baptisms, marriages and deaths.

8. The father of any child born in this Province, or in case of his death or absence, the mother, or in case of the death or inability of both parents, any person standing in the place of the parents, or if none such there be, then the occupier of the house or tenement in which to his knowledge such child was born, or the nurse present at the birth, shall, within thirty days from the date of such birth, give notice thereof to the Division Registrar in which such child was born, giving as far as possible the particulars required in Schedule A, with such additional information as may be required by the Registrar-General from time to time, which particulars shall be entered by the Division Registrar in his book. 39 V. c. 2, s. 10.

Notice of birth to be given.



Registry of  
birth of ille-  
gitimate chil-  
dren.

**9.** In registering the birth of an illegitimate child, it shall not be lawful for the name of any person to be entered as the father, unless at the joint request of the mother and of the person acknowledging himself to be the father; and in all cases of the registration of the birth of illegitimate children, the Division Registrar shall write the word "*Illegitimate*" in the column set apart for the name of the child, and immediately under the name, if any. 39 V. c. 2, s. 11.

Time for re-  
gistry.

**10.** Every registration of a birth shall be made within the time aforesaid; but nothing herein contained shall prevent the subsequent registration of such birth within the period of one year. 39 V. c. 2, s. 12.

Particulars as  
to marriage to  
be furnished.

**11.** Every clergyman, minister or other person authorized by law to celebrate marriages, shall be required to report each and every marriage he celebrates to the Registrar of the Division within which such marriage is celebrated, within ninety days from the date of such marriage, with the particulars required by Schedule B, appended to this Act, and in order the better to enable the said clergyman, minister or other person to make such report as aforesaid, he shall be furnished by the Division Registrar of the Division in which he resides with blank forms containing the particulars required by the said Schedule B. 39 V. c. 2, s. 13.

Registrar to  
furnish forms.

Particulars as  
to death to be  
furnished to  
Registrars.

**12.** The occupier of the house or tenement in which a death takes place, or if the occupier be the person who has died, then some one of the persons residing in the house in which the death took place, or if such death has not taken place within a house, then any person present at the death or having any knowledge of the circumstances attending the same, or the Coroner who attended any inquest held on such person, shall, before the interment of the body, supply to the Division Registrar of the Division in which such death took place, according to his or her knowledge or belief, all the particulars required to be registered touching such death, by the form provided by this Act. 39 V. c. 2, s. 6.

Certificate of  
registry of  
death.

**13.** Every Division Registrar shall, immediately upon registering any death, or as soon thereafter as he is required so to do, without fee or reward, deliver to any person requiring the same for the purpose of burial, a certificate according to form of Schedule D appended to this Act, that the particulars of such death have been duly registered. 39 V. c. 2, s. 7.

Minister, &c.,  
on burying to  
make return of  
death, except  
on receipt of  
certificate from  
Registrar.

**14.** Every minister or other person who buries or performs any funeral or religious service for the burial of any dead body, unless he has received a certificate under the hand of the Registrar of the Division in which the death took place, according to the Schedule D to this Act annexed, that the particulars

of such death have been duly registered, shall make a return of such death according to Schedule C to this Act annexed, to the Registrar of the Division in which the death took place, within seven days after such burial. 39 V. c. 2, s. 8.

**15.** Every duly qualified medical practitioner, who was last in attendance during the last illness of any person, shall, within ten days after having notice or knowledge of the death of such person, transmit to the Division Registrar of the Division in which the death took place, a certificate under his signature of the cause of death, according to the form of Schedule E appended to this Act, to be provided by the said Division Registrar, who shall be furnished with such forms; and it shall be the duty of every such medical practitioner to apply to the said Division Registrar for blank forms for that purpose, and upon the receipt of the said certificate from the said medical practitioner, by the Division Registrar, he shall make the entry as to the cause of death of such person according to the fact stated in the said certificate. 39 V. c. 2, s. 14.

Medical practitioner to certify to Registrars as to death.

**16.** If within one year after the entry of any birth, marriage or death, it is discovered that any error has been made in such entry, then upon the same being reported to the proper Division Registrar within the time aforesaid, it shall be his duty to inquire into the same, and if satisfied that an error has been committed in any such entry, it shall be lawful for him to correct the erroneous entry, according to the truth of the case, by entry in the margin, without any alteration in the original entry; and having made such correction, he shall, if the original entry of the birth, marriage or death so corrected has been returned as hereinbefore provided, report the same, according to the facts of the case, to the Registrar-General, whose duty it shall be to correct such erroneous entry in the margin of the book or form containing the original entry. 39 V. c. 2, s. 15.

Correction of errors—Report to Registrar-General.

**17.** If any Division Registrar refuses or neglects to perform the duties required of him by this Act as such Division Registrar, he shall for every such offence, upon conviction thereof before any Justice of the Peace, forfeit the sum of fifty dollars to Her Majesty; and it shall be the duty of the County Crown Attorney in each County to prosecute such officials for any refusal or neglect to perform the duties required by this Act, when notified by the Registrar-General, Inspector or other parties. 39 V. c. 2, s. 16.

Penalty on Registrars for neglect of duty.

**18.** The Registrar-General shall cause the original returns of the births, marriages and deaths in each Division, together with all the particulars communicated to him by the said Division Registrars, to be arranged, indexed, bound and kept in the office of the Registrar-General. 39 V. c. 2, s. 17.

Registrar-General to keep and arrange, etc., returns.

Search of, and  
extracts from  
records evi-  
dence—fees.

**19.** All persons shall be entitled, at all reasonable hours, to search these records, and to require and receive extracts duly certified by the Registrar-General or Inspector; which extracts shall be evidence of the entry certified, and *prima facie* evidence in any Court of Law or Equity in this Province, of the facts therein stated; and for every such certificate, the person so requiring the same shall pay a fee of fifty cents. 39 V. c. 2, s. 18.

Registrar-  
General to  
publish re-  
ports.

**20.** The Registrar-General shall, on or before the first day of July in each year, collate, publish and distribute, for the use of the Legislature, a full report of the births, marriages and deaths of the preceding year, giving such details, statistics and information as the Lieutenant-Governor in Council may think necessary. 39 V. c. 2, s. 20.

Power to  
make rules for  
obtaining in-  
formation.

**21.** The Lieutenant-Governor in Council may, from time to time, make such further rules, orders and regulations as may be required for the purpose of effectually obtaining the information required by this Act. 39 V. c. 2, s. 21.

Inspector of  
registration  
offices.

**22** The Lieutenant-Governor in Council may appoint an Inspector, whose duty it shall be to inspect the different Registration Offices throughout the Province, and carefully examine the different Schedules, to see that the entries and registrations are made therein in a proper manner and in legible handwriting. 39 V. c. 2, s. 9.

Penalty for  
false state-  
ments.

**23.** Any person who knowingly or wilfully makes or causes to be made any false statement touching any of the particulars required to be reported and entered under this Act, shall, upon conviction thereof before any Justice of the Peace, forfeit the sum of forty dollars. 39 V. c. 2, s. 19.

Penalty for  
neglect to re-  
port.

**24.** If any householder, head of a family, clergyman, physician, or other person or persons required by this Act to report births, marriages and deaths refuses or wilfully neglects to do so within the time named, such person shall, for each and every offence, forfeit and pay a sum not less than one dollar, nor more than twenty dollars and costs, in the discretion of the presiding Justice before whom the case is heard; and it shall be the duty of the Division Registrar to prosecute all such persons so neglecting or refusing to make the required reports: but if the return required by this Act to be made by more than one person is made by any one of such persons, the other of such persons shall not be liable to any penalty in respect of his default. 39 V. c. 2, s. 22.

Procedure on  
complaints.

**25.** Any Justice of the Peace having jurisdiction within the locality where any offence against this Act has been committed may hear and determine such complaint, and shall have power,

in case the penalty and costs awarded by him are not forthwith paid upon conviction, to levy the same by distress and sale of the goods and chattels of the offender, by warrant under his hand and seal; and, except as provided in section seventeen the penalty when recovered shall be paid over by such Justice, one half to the person complaining and one half to the local Municipality within which the offence is committed; and, in default of payment or sufficient distress, the offender may, by warrant signed and sealed as aforesaid, be imprisoned in the Common Gaol for a period not less than one day nor more than twenty days, at the discretion of such Justice, unless such penalty, costs and charges of commitment are sooner paid. 39 V. c. 2, s. 23.

**26.** Each Municipality throughout the Province of Ontario shall pay annually to the Division Registrar appointed under the said Act, a fee of ten cents for each birth, marriage and death registered by him under the provisions of this Act, upon receiving from the Inspector a certificate of the number of registrations made by such Registrar. 39 V. c. 2, s. 24.

Fees to  
Registrars.





**SCHEDULE B.—MARRIAGES.** (Sections 5 and 11.)

County of

Division of

[illegible]

I hereby certify the foregoing to be the true and correct entries of all marriages returned to me for the half-year ending the day of \_\_\_\_\_ A.D. 18\_\_\_\_

Given under my hand this \_\_\_\_\_

Division Registrar of

18



SCHEDULE D.

(Sections 13 and 14.)

I, \_\_\_\_\_, Division Registrar of the Municipality of \_\_\_\_\_,  
do hereby certify that the particulars of the death  
of \_\_\_\_\_ have been duly registered.

Division Registrar's Office,  
day of \_\_\_\_\_ 187 .  
(Signature)

SCHEDULE E.

(Section 15.)

CAUSE OF DEATH.

County of \_\_\_\_\_ Division of \_\_\_\_\_

Name and surname of deceased.	Sex.	Residence.	Rank or profession.	Duration of illness.	Cause of death.

I hereby certify the foregoing to be a true and correct certificate of the cause of  
the death of the person therein named.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
M. D.



## TITLE VI.

### ADMINISTRATION OF JUSTICE.

---

#### 1. RESPECTING THE SUPREME COURT AND EXCHEQUER COURT OF CANADA.

CHAP. 37.—Supreme Court and Exchequer Court of Canada, p. 387.

#### 2. CONSTITUTION OF THE PROVINCIAL COURTS.

- |  |  |
|--|--|
| CHAP. 38.—Court of Appeal, p. 388.             | CHAP. 43.—County Courts, p. 448.             |
| “ 39.—Superior Courts of Law, p. 401.          | “ 44.—Court of General Sessions, 457.        |
| “ 40.—Court of Chancery, p. 411.               | “ 45.—County Judge’s Criminal Court, p. 460. |
| “ 41.—Courts of Assize and Nisi Prius, p. 435. | “ 46.—Surrogate Courts, p. 461.              |
| “ 42.—County Judges and Local Courts, p. 440.  | “ 47.—Division Courts, p. 482.               |

#### 3. JURORS AND JURIES.

CHAP. 48.—Jurors and Juries, p. 533.

#### 4. PROCEDURE IN CIVIL MATTERS.

- |   |  |
|---|--|
| CHAP. 49.—Administration of Justice, p. 594.                        | CHAP. 62.—Witnesses and Evidence, p. 776.                        |
| “ 50.—Common Law Procedure Act, p. 608.                             | “ 63.—Commissioners to take Affidavits, p. 790.                  |
| “ 51.—Ejectment, p. 702.  |  |
| “ 52.—Prohibition Mandamus and Injunction, p. 724.                  | “ 64.—Costs of Arbitrations, p. 793.                             |
| “ 53.—Replevin, p. 731.   | “ 65.—Costs of Distresses for Small Rents and Penalties, p. 796. |
| “ 54.—Interpleader, p. 741.   |  |
| “ 55.—Dower, p. 747.  | “ 66.—Execution, p. 800.   |
| “ 56.—Slander and Libel, p. 758.                                    | “ 67.—Arrest and Imprisonment for Debt, p. 817.                  |
| “ 57.—Seduction, p. 759.  | “ 68.—Absconding Debtors, p. 825.                                |
| “ 58.—Procedure in Crown Suits, p. 760.                             | “ 69.—Indigent Debtors, p. 835.                                  |
| “ 59.—Petitions of Right, p. 763.                                   | “ 70.—Habeas Corpus, p. 840.                                     |
| “ 60.—Administration of estates of Intestates by the Crown, p. 770. |  |
| “ 61.—Limitation of certain Actions, p. 773.                        |  |

## 5. ADMINISTRATION OF JUSTICE IN CRIMINAL MATTERS.

1. *Justices of the Peace.*

CHAP. 71.—Qualification and Appointment of, p. 844.

“ 72.—Police Magistrates, p. 848

“ 73.—Protection from vexatious actions, p. 850.

“ 74.—Duties out of Sessions and appeals to the General Sessions, p. 855.

“ 75.—Procedure in appeals to County Judge, p. 858.

“ 76.—Returns of Convictions and Fines, p. 865.

“ 77.—Fees of Justices, p. 868.

2. *Other Officers of Justice.*

CHAP. 78.—County Attorneys, p. 870

“ 79.—Coroners, p. 875.

“ 80.—Commissioners to take recognizances, p. 878.

CHAP. 81.—Commissioners of Police, p. 880.

“ 82.—Constables, p. 881.

“ 83.—Special Constables, p. 884.

3. *Expenses of Administration of Justice.*

CHAP. 84.—Fees of Counsel and Officers of Justice, p. 890.

“ 85.—Expenditure of County Funds, p. 899.

“ 86.—Expenses of Administration of Justice, p. 902.

“ 87.—Payment of Crown Witnesses, p. 909.

“ 88.—Estreats, p. 912.

“ 89.—Appropriation of Fines, p. 917.

## 6. IN UNORGANIZED TRACTS.

CHAP. 90.—Administration of Justice in unorganized Tracts, p. 918.

## 7. IN THE VICINITY OF NIAGARA FALLS.

CHAP. 91.—Administration of Justice in the Vicinity of Niagara Falls, p. 933.

## 1. RESPECTING THE SUPREME AND EXCHEQUER COURTS OF CANADA.

## CHAPTER 37.

An Act respecting the Supreme Court of Canada and the Exchequer Court of Canada.

Supreme Court to have jurisdiction

1. In controversies between Canada and Ontario, s. 1 (1).

2. “ “ Ontario and the Province, s. 1 (2).

3. In cases involving the validity of Acts of Canada or Ontario, s. 1 (3).

Authority of Court of Exchequer as to use of Court Houses, &c. s. 2.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts (and it is hereby agreed on behalf of the said Province of Ontario,) as follows :—

Supreme Court and Exchequer Court of Canada to have jurisdiction.

38 V., c. 11 (D)

1. The Supreme Court of Canada, and the Exchequer Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the Act of the Parliament of Canada, known as "*The Supreme and Exchequer Court Act*," shall have jurisdiction in the following cases :—

In controversies between Canada and Ontario.

(1) Of controversies between the Dominion of Canada and this Province ;

In controversies between Ontario and certain other Provinces.

(2) Of controversies between any other Province of the Dominion, which may have passed an Act similar to this present Act, and this Province ;

In certain cases involving the validity of Acts of Canada or Ontario.

(3) Of suits, actions, or proceedings, in which the parties thereto, by their pleadings have raised the question of the validity of an Act of the Parliament of Canada, or of an Act of the Legislature of this Province, when in the opinion of a Judge of the Court in which the same are pending such question is material ; and in such case the said Judge shall, at the request of the parties, and may without such request, if he thinks fit, order the case to be removed to the Supreme Court in order to the decision of such question. 40 V. c. 5, s. 1.

Authority of Judges of the Court of Exchequer as to use of Court House, etc.

2. In case sittings of the Court of Exchequer of Canada are appointed to be held in any City, Town, or place in which a Court House is situated, the Judge presiding at any such sittings, shall have, in all respects the same authority as a Judge at Nisi Prius in regard to the use of the Court House and other buildings or apartments set apart in the County for the administration of justice. 40 V. c. 8, s. 1.

[See 38 V. c. 11 (D), ss. 54, 55 & 56 ; 39 V. c. 26 (D), s. 17.]

## 2. CONSTITUTION OF PROVINCIAL COURTS.

### CHAPTER 38.

#### An Act respecting the Court of Appeal.

Short title, s. 1.  
 Interpretation, s. 2.  
 Judges, ss. 3-10.  
     Appointment and style, s. 3-5.  
     Precedence, s. 6.  
     Oath, s. 7.  
     Duties, ss. 8-10.  
 Registrar, s. 11.  
 Sittings, ss. 12-17.

Jurisdiction and powers of Court, ss. 18-25.  
 Conditions of appeal :—  
     Security, s. 26.  
     Execution stayed on giving security, ss. 27-29.  
 Procedure in appeals, ss. 30-32.  
 Procedure where error is alleged, ss. 33-39.

Procedure in case of death, &c., of parties, s. 40.	Certificate of decision, s. 44.
Appellants may discontinue, s. 41.	Limitation of appeals, s. 45-48.
Respondent may consent to reversal, s. 42.	Appeals to Her Majesty in Privy Council, ss. 49-54.
Interest on judgments s. 43.	Fees, s. 55.
	General Rules and Orders, s. 56.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. This Act may be cited as "*The Court of Appeal Act*." Short title.

2. In the construction of this Act, unless it is otherwise provided, or the context manifestly requires a different construction, the word "judgment," when used with reference to a Court appealed from, or to any Judge of such Court, shall include any judgment, decree, rule, order, or decision of such Court or Judge.

Interpretation of the word "judgment."

#### JUDGES.

3. The Court of Appeal at present existing is hereby continued under the name aforesaid, and shall consist of a Chief Justice (who shall have the title hereinafter mentioned) and three Puisne Justices (to be called "Justices of Appeal"), appointed from time to time as provided by *The British North America Act*, 1867, and the Judges for the time being of the Superior Courts of Law and Equity, who shall be *ex-officio* Judges of the Court of Appeal, so as to provide for the cases mentioned in the tenth section of this Act. C. S. U. C. c. 13, ss. 1 & 2 37 V. c. 7, ss. 1 & 7; 39 V. c. 7, s. 22; 40 V. c. 7, *Sched. A* (25).

Who to constitute the Court

4. The Chief Justice and Justices appointed as aforesaid may be selected from the Judges for the time being, or retired Judges of the Courts of Queen's Bench, Chancery, or Common Pleas, or from such barristers as are eligible to be appointed Judges of those Courts. 37 V. c. 7, ss. 1 & 2.

Vacancies how filled, and by whom.

5. Until a vacancy occurs in the office of the Chief Justice of the Court of Queen's Bench, the Chief Justice of the Court of Appeal shall be called "The Chief Justice of Appeal," and when such vacancy occurs shall thenceforth be called "The Chief Justice of Ontario," and the Chief Judge of the Court of Queen's Bench shall be called thenceforth "The Chief Justice of the Court of Queen's Bench." 40 V. c. 8, s. 2.

Style of the Chief Justice.

#### *Precedence of Judges.*

6. The Chief Justice of Appeal shall have rank and precedence over all other Judges of the Courts of Law and Equity in Ontario. 37 V. c. 7, s. 5. See 25 V. c. 8, s. 1; 32 V. c. 24, s. 1.

Rank of Chief Justice of Appeal.



Justices of  
Appeal and  
Chief Justice  
of Superior  
Courts.

2. The Justices of Appeal, the Chancellor of Ontario, and the Chief Justices of the Superior Courts of Common Law shall have rank and precedence among themselves according to their seniority of appointment to any of the said offices; but this section shall not interfere with the precedence now existing between the present Chancellor of Ontario and the present Chief Justice of the Court of Common Pleas. 37 V. c. 7, s. 5.

Vice-Chancel-  
lors and Puisne  
Judges.

3. The Vice-Chancellors and the Puisne Judges of the Superior Courts of Law shall have rank and precedence among themselves according to seniority of appointment to their respective offices. C. S. U. C. c. 10, s. 6; C. S. U. C. c. 12, s. 4.

#### *Oath.*

Oath of Judges  
of Court of  
Appeal.

7. Every Judge of the Court of Appeal appointed as aforesaid shall, previous to entering upon the duties of his office, take the following oath, to be administered to the Chief Justice by the Lieutenant-Governor in Council, and to the Justices of Appeal in open Court by the Chief Justice:

"I, \_\_\_\_\_, do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as Chief Justice (or one of the Justices) of the Court of Appeal; So help me God."

37 V. c. 7, s. 16.

#### *Duties.*

Duties and  
powers of the  
Judges.

8. The Chief Justice and Justices of Appeal, may, in addition to their duties as Judges of the Court of Appeal, preside over Courts of Assize and Nisi Prius, and of Oyer and Terminer and General Gaol Delivery, and hold Chancery sittings for the examination of witnesses or hearing of causes; and every such Justice in the exercise of such duties shall have the same rights, powers and privileges as a Judge of either of the Superior Courts of Common Law, or of the Court of Chancery, sitting as aforesaid. 37 V. c. 7, s. 3; 40 V. c. 7, *Sched. A* (26).

Power to the  
Chief Justice  
and Judges to  
sit in the  
Superior  
Courts.

9. The Chief Justice, or any of the Justices of Appeal, may sit in any of the Superior Courts, upon the request of the Judges or Judge with or for whom he is so requested to sit; and the said Chief Justice or Justice shall, while so sitting, have all the powers and authority of a Judge of the Court in which he is so sitting. 37 V. c. 7, s. 6. *See also Rev. Stat. c. 39 s. 10, and c. 40, s. 22.*

Vacancies in  
the Court may  
be filled by and  
from the  
Judges of the  
Superior  
Courts.

10. In case of there being a vacancy in the Court of Appeal, or in case from illness or some other cause, one or more of the Judges of the said Court is or are not present at some sitting of the Court, or in case one or more of the said Judges is or are under some legal disqualification to hear an appeal, the Judges of

the Courts of Queen's Bench, Chancery and Common Pleas shall choose from amongst their number a Judge, or as many Judges as necessary, to supply for the time the place or places vacant, or the place or places of the Judge or Judges of the Court of Appeal so absent or disqualified; and the Judges so chosen and acting shall have authority to continue to hear appeals partly heard before them, and to give judgment in all appeals heard before them, notwithstanding that such vacancy may in the meantime have been filled up, or that the Judge who was absent may have resumed his duties. 37 V. c. 7, s. 8.

## REGISTRAR.

**11.** The Lieutenant-Governor in Council may from time to time appoint a suitable person to be the Registrar of the Court of Appeal. Registrar may be appointed for the Court of Appeal.

**2.** The said Registrar shall not take for his own use or benefit, directly or indirectly, any fee or emolument save the salary to which he may be entitled by law; and all fees received by him on account of the said office shall form part of the Consolidated Revenue Fund, and shall be payable in stamps, subject to *The Act respecting Law Stamps*. 39 V. c. 7, s. 5. Fees of Registrar to form part of Con. Rev. Fund. Rev. Stat. c. 21.

## SITTINGS.

**12.** No sitting of the Court of Appeal shall be held unless four of its members are present, and no greater number than four shall sit at one time, except for the purpose of giving judgments. 37 V. c. 7, s. 4. Four judges only to sit, and four to be a quorum.

**13.** No Judge against whose judgment an appeal is brought, or who took part in the trial at Nisi Prius or in the hearing in the Court below, shall sit or take part in the hearing of or adjudication upon the proceedings in the Court of Appeal. 37 V. c. 7, s. 9; 39 V. c. 7, s. 2, *Sched. B*. Judge whose decision appealed from, &c., not to sit on appeal.

**14.** In the absence of the Chief Justice of Appeal, the Judge entitled to precedence over the other Judges present shall preside. 37 V. c. 7, s. 10. Presiding Judge in absence of Chief Justice.

**15.** The Court of Appeal shall hold its sittings at the City of Toronto, at such times and for such periods as the acting Judges thereof for the time being, or a majority of them, may, from time to time, deem necessary or convenient for the speedy dispatch of business, and may by rule or order name and appoint. 37 V. c. 7, s. 12. See C. S. U. C. c. 13, s. 8; 32 V. c. 24, s. 4. Sittings.

**16.** The Court may adjourn such sittings from day to day, or for such longer period as the Court may deem expedient; and the Court may permit cases to be entered, after the commencement of such sittings, for any adjourned sittings of the Adjournment. Cases to be entered for adjourned sittings by leave.

Appointment  
of days for  
giving judg-  
ment.

Court, and upon such notice to the respondents as the Court may fix, and may make such rules and orders therefor as they may deem necessary; and the Court may also fix and appoint days for giving judgment in cases previously argued, and for disposing of such other business as the Court in its discretion may see fit; but there shall be no sitting of the said Court, by adjournment or otherwise, between the first day of July and the twenty-first day of August in any year, save for the purpose of giving judgment in cases previously argued. 32 V. c. 24, s. 4.

Notice of  
rules, &c., how  
given.

**17.** Notice of such respective rules or orders shall be given by affixing the same in some conspicuous place on the outside of the rooms where the sittings of the said Court are appointed to be held, and in the Judges' Chambers, and in the offices of the Master and Registrar of the Court of Chancery, and of the Clerks of the Crown and Pleas, in Osgoode Hall, ten days before the day appointed.

2. Such notice may be to the following effect:—

*In the Court of Appeal.*

Form of  
notice.

“ This Court will, on the                      day of                      , 18    , hold sittings, and will proceed on that day and the following days to hear and dispose of the cases mentioned in the subjoined list, and to give judgment in cases previously argued [or if the Court sits only for giving judgment, to give judgment in cases previously argued], and to dispose of such other business as the Court may in its discretion see fit.

(Signed)

“ A. G.,  
Registrar.”

*(List to be subjoined.)*

32 V. c. 24, s. 5; 40 V. c. 8, s. 3.

#### APPELLATE JURISDICTION.

Jurisdiction  
in appeals  
from Superior  
Courts.

**18.** The Court shall have an appellate jurisdiction in both civil and criminal cases; and an appeal shall lie thereto from every judgment of any of the Superior Courts, or of a Judge sitting alone as and for any such Courts, in a cause or matter depending in any of the said Courts, or under any of the powers given by “*The Administration of Justice Act*,”—including judgments

Rev. Stat. c.  
49.

(a.) Upon any case stated by an Arbitrator, or upon any appeal authorized by law from the decision of any Arbitrator or Referee, or upon any motion to set aside or refer back an award;

(b.) Upon any motion for the issue of a writ of mandamus or upon any question arising upon the return of such writ; and

(c.) Upon any application for a rule to quash a by-law of a Municipal Council in whole or in part, whether a rule *nisi* has been refused, discharged, or made absolute.

2. No other appeal from a decision of either of the Superior Courts of Law shall be allowed, unless the judgment, decision or other matter appealed against appears of record.

3. Where a new trial is granted or refused upon matter of discretion only, as on the ground that the verdict is against the weight of evidence or otherwise, no appeal shall be allowed. 40 V. c. 7, *Sched. A* (27).

**19.** The Court shall also have jurisdiction,—

Miscellaneous.

(a.) In appeals from County Courts, as provided in "*The County Courts Act*." Rev. Stat. c. 43, ss. 34-42.

(b.) In appeals from the Surrogate Courts, as provided in "*The Surrogate Courts Act*." Rev. Stat. c. 46, s. 31.

(c.) In appeals from Stipendiary Magistrates, as provided in the twenty-fifth section of *The Act respecting the Administration of Justice in Unorganized Tracts*. Rev. Stat. c. 90, s. 25.

(d.) In appeals from a Judge of a County Court, as provided in *The Act respecting Water Privileges*. Rev. Stat. c. 114, ss. 15-18.

#### ORIGINAL JURISDICTION,

**20.** The Court of Appeal and the Judges thereof shall have jurisdiction in the trial of Election cases, as provided by "*The Election Act*" and "*The Controverted Elections Act*." Jurisdiction in election cases. Rev. Stat. cc. 10 & 11.

#### POWERS.

**21.** The Court shall have power to quash proceedings in cases brought before it, in which error or appeal does not lie, or where such proceedings are taken against good faith. C. S. U. C. c. 13, s. 10; 40 V. 7, *Sched. A* (28). May quash proceedings : when.

**22.** The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court or Judge from which or whom the appeal is had, together with full discretionary power to receive further evidence upon questions of fact : such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before any person whom the Court may nominate. Powers of the Court of Appeal as to amendment, evidence, judgments and decrees.

2. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters



which have occurred after the date of the decision from which the appeal is brought.

3. Upon appeals from a decree or judgment upon the merits at the trial or hearing of any action or matter, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without the special leave of the Court. 37 V. c. 7, s. 11.

To make  
whatever order  
may be re-  
quired.

**23.** The Court shall have power to dismiss an appeal, or give any judgment and make any decree or order which ought to have been made, and to direct the issue of any process, or the taking of any proceedings in the Court below, or to award restitution and payment of costs, or to make such further or other order as the case may require. C. S. U. C. c. 13, s. 11; 37 V. c. 7, s. 11.

Costs.

**24.** The Court shall have power to make such order, as to the whole or any part of the costs of an appeal as may seem just. 37 V. c. 7, s. 11 (*a*).

Manner of  
executing the  
powers in the  
preceding sec-  
tion.

**25.** The powers in the three next preceding sections mentioned may be exercised by the Court, notwithstanding that the appeal is brought against part only of the judgment of the Court below; and such power may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from, or complained of the judgment. C. S. U. C. c. 13, s. 11; 37 V. c. 7, s. 11 (*a*).

#### SECURITY ON APPEAL.

Appellants to  
give security.

**26.** No appeal shall be allowed unless notice thereof is given in writing to the opposite party and to the Clerk of the Crown and Pleas, or Registrar of the proper Court, within one month after the judgment complained of, or within such further time as the Court appealed from, or a Judge thereof, may allow, nor until the appellant has given proper security to the extent of four hundred dollars, to the satisfaction of the Court appealed from, that he will effectually prosecute his appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is affirmed. C. S. U. C. c. 13, s. 15; 40 V. c. 7, *Sched. A* (29).

#### \* STAY OF EXECUTION.

When perfect-  
ed, execution  
to be stayed.

**27.** Upon the perfecting of such security, execution shall be stayed in the original cause, except in the following cases:

Subject to cer-  
tain exceptions  
in which par-  
tial perform-  
ance is requir-

1. If the judgment appealed from directs the assignment or delivery of documents or personal property, execution shall not be stayed until the things directed to be assigned or delivered have been brought into the Court appealed from, or placed in

the custody of such officer or receiver as that Court appoints, <sup>ed by delivery into Court.</sup> nor until security has been given to the satisfaction of that Court, and in such sum as it directs, that the appellant will obey the order of the Court of Appeal;

2. If the judgment appealed from directs the execution of a conveyance or any other instrument, execution shall not be stayed until the instrument has been executed and deposited with the proper officer of the Court appealed from, to abide the judgment of the Court of Appeal; <sup>Or by executing the instrument.</sup>

3. If the judgment appealed from directs the sale or delivery of possession of real property or chattels real, execution shall not be stayed until security has been entered into to the satisfaction of the Court appealed from, and in such sum as that Court directs, that during the possession of the property by the appellant, he will not commit or suffer to be committed any waste on the property, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, and also, in case the judgment is for the sale of property and the payment of a deficiency arising upon the sale, that the appellant will pay the deficiency; <sup>Or by the giving of special security not to commit waste.</sup>

4. If the judgment appealed from directs the payment of money, execution shall not be stayed until the appellant has given security, to the satisfaction of the Court appealed from, that if the judgment, or any part thereof, be affirmed, the appellant will pay the amount thereby directed to be paid, or the part thereof as to which the judgment may be affirmed if it be affirmed only as to part, and all damages awarded against the appellant on the appeal. C. S. U. C. c. 13, s. 16. <sup>Or to pay debt and costs.</sup>

28. When the security has been perfected and allowed, any Judge of the Court appealed from may issue his *fiat* to the Sheriff to whom any execution on the judgment has issued, to stay the execution, and the execution shall be thereby stayed, whether a levy has been made under it or not; but if the grounds of appeal appear to be frivolous, the Court whose judgment is appealed from, or a Judge upon summons, may order execution to issue or to be proceeded with. C. S. U. C. c. 13, ss. 17 & 35. <sup>When given, a *fiat* to stay execution to be granted.  
Judge may order execution to issue.</sup>

29. If at the time of the receipt by the Sheriff of the *fiat*, or of a copy thereof, the money has been made or received by him but not paid over to the party who issued the execution, the party appealing may demand back from the Sheriff the amount made or received under the execution, or so much thereof as is in his hands not paid over, and in default of payment by the Sheriff upon such demand, the appellant may recover the same from him in an action for money had and received. C. S. U. C. c. 13, s. 18. <sup>Execution may be superseded, or payment of money levied be withheld.</sup>

## PROCEDURE IN APPEALS FROM SUPERIOR COURTS.

Notice of appeal.

**30.** A party desirous of appealing from any judgment of a Superior Court or of a Judge thereof shall file a notice of appeal with the Registrar of the Court of Appeal, and shall serve a copy thereof on the respondent, his solicitor or agent before giving the security required by this Act.

Form.

2. Such notice may be in the following form :

*“ In the Court of (Q. B., Chy., or C. P.)*

*“ Between A. B., Plaintiff (Appellant or Respondent) and C. D., Defendant (Respondent or Appellant) (or as the case may require).*

Take notice that A. B. the above named Plaintiff hereby appeals from the (judgment, decree, rule, order or decision) pronounced in this cause (or matter), by this Court (or by Mr. Justice , on the day of 18 , whereby a rule nisi, obtained by the Plaintiff for a new trial, was discharged (or as the case may be).

40 V. c. 7, *Sched. A.* (30).

Appeal to be a step in the cause and upon a case stated.

**31.** The appeal shall be a step in the cause or matter in which the judgment complained of was given, and shall be upon a case to be stated by the parties, or in the event of difference to be settled by the Court appealed from, or a Judge thereof, and shall set forth the judgment objected to, and so much of the pleadings, evidence, affidavits, documents, and the ruling or judgment objected to, as may be necessary to raise the question for the decision of the Court of Appeal.

2. When the case has been so stated and settled, the same shall be forthwith delivered by the appellant to the Registrar of the Court of Appeal. 40 V. c. 7, *Sched. A.* (30).

Transcript of judgment to be furnished.

**32.** The appellant shall, at least four clear days before the day appointed for hearing the argument or such other time as may be fixed by the General Rules of the Court of Appeal, deliver to the Registrar a copy for each of the Judges of the transcript of the judgment or case, with such further or other matter and particulars as may be directed by such Rules, or in default the appeal may be dismissed with costs. 40 V. c. 7, *Sched. A.* (30).

## PROCEDURE WHERE ERROR IS ALLEGED.

Notice of error in law.

**33.** Where the ground of appeal is that there is error in law, the appellant, instead of preparing a case as in the thirty-first section mentioned, may deliver to the Clerk of the Crown of the Court wherein the suit was instituted, a memorandum in writing, entitled in the Court and cause, and signed by the party or his attorney, alleging that there is error in law in the record and proceedings. C. S. U. C. c. 13, s. 33 ; 40 V. 7, *Sched. A.* (31).

To be filed, etc.

**34.** The Clerk shall file the memorandum and deliver to the party lodging the same a note of the receipt thereof, and the latter shall serve on the opposite party, or his attorney, a copy of the note.

## 2. The memorandum shall be to the effect following:—

Form of memorandum.

“ In the (Q. B. or C. P.)  
 “ The            day of            , in the year of our Lord 18    . (*The day of lodging note of error.*)

“ A. B. and C. D.

“ The plaintiff (*or* defendant) says that there is error in law in the record and proceedings in this action, and the defendant (*or* plaintiff) says that there is no error therein.

“ A. B., Plaintiff,

“ (*or* C. D., Defendant),

“ (*or* E. F., Attorney for Plaintiff *or* Defendant.)”

C. S. U. C. c. 13, s. 34; 40 V. c. 7, *Sched. A.* (32).

**35.** The assignment of and joinder in error in law shall not be used, and instead thereof a suggestion to the effect that error is alleged by the one party and denied by the other, may be entered on the judgment-roll. C. S. U. C. c. 13, s. 36.

Assignment of error dispensed with.

## 2. The suggestion shall be to the effect following:—

Form of suggestion.

“ The            day of            , in the year of our Lord 18    .

(*The day of making the entry on the roll.*)

“ The plaintiff (*or* defendant) says that there is error in the above record and proceedings, and the defendant (*or* plaintiff) says there is no error therein.”

C. S. U. C. c. 13, s. 37.

**36.** In case the respondent contends that such proceeding in error is barred by release of error or other matter of fact, he may apply to the Court appealed from or a Judge thereof, who shall thereupon give such direction and make such order for the convenient determination of such contention as may appear necessary. 40 V. c. 7, *Sched. A.* (33).

Where respondent sets up that error is barred.

**37.** The roll shall be made up, and the suggestion entered by the appellant, within ten days after the service of the note of the receipt of the memorandum alleging error, or within such other time as the Court appealed from or a Judge orders; and in default thereof, the respondent, his executors or administrators, may apply to the Court appealed from, or a Judge thereof, for an order dismissing the appeal for want of prosecution. C. S. U. C. c. 13, s. 39; 40 V. c. 7, *Sched. A.* (34).

Roll and suggestion to be made up in ten days.

**38.** In case of an appeal on a judgment against several persons in which some only appeal, the memorandum alleging error and the note of the receipt of such memorandum shall state the names of the persons who appeal, and in case the other persons against whom judgment has been given decline to join in the appeal, the same may be continued and the suggestion

Practice where some only of several parties appeal.



entered, stating the persons who appeal, without a summons and severance; or if such other parties afterwards elect to join, then the suggestion shall state them to be, and they shall be deemed appellants, although not mentioned as such in previous proceedings. C. S. U. C. c. 13, s. 40.

The clerk to certify transcript of the judgment below.

**39.** Upon such suggestion being entered, and after the security required to be given by the appellant has been duly allowed, the Clerk of the Court appealed from shall, on payment of his fees, prepare a full transcript of the judgment appealed against, and certify the same under the seal of the Court, and shall forthwith transmit the same to the Registrar of the Court of Appeal, and the cause may then be set down for argument in that Court. C. S. U. C. c. 13, s. 41.

#### PROCEDURE IN CASE OF DEATH, &C., OF PARTIES.

Proceedings for revival, &c. of defective proceedings to be in Court below.

**40.** In case of the proceedings becoming defective by the death of any of the parties, transmission of interest, or any other cause, the appeal shall not thereby be abated, but the appellant, or his proper representative, may take all proper proceedings, according to the practice of the Court appealed from, for reviving and continuing the proceedings by and against the proper parties; or in case of the appellant or his proper representative omitting to take such proceedings within three months after the proceedings have so become defective, or within such further time as the Court or a Judge may allow, the respondent, or his proper representative, may apply to the Court appealed from or a Judge thereof, to dismiss the appeal for want of prosecution. 40 V. c. 7, *Sched. A.* (35).

#### APPELLANTS MAY DISCONTINUE.

Appellants may discontinue.

**41.** An appellant may discontinue his proceedings by giving to the respondent a notice headed in the Court and cause, and signed by the appellant or his attorney, stating that he discontinues such proceedings; and thereupon the respondent shall be at once entitled to the costs of and occasioned by the proceedings in appeal, and may either sign judgment for such costs, or obtain an order for their payment in the Court below, and may take all further proceedings in that Court as if no appeal had been brought. C. S. U. C. c. 13, s. 13.

#### RESPONDENTS MAY ASSENT TO REVERSAL.

A respondent may consent to a reversal of the judgment or decree, etc.

**42.** A respondent may consent to the reversal of the judgment, decree or proceeding appealed against, by giving to the appellant a notice headed in the Court and cause, and signed by the respondent or his attorney, stating that he consents to the reversal of the judgment, decree or other proceeding, and thereupon the Court shall pronounce judgment of reversal as of course. C. S. U. C. c. 13, s. 14.

## INTEREST ON JUDGMENTS.

**43.** When, on an appeal against a judgment in any action personal, the Court of Appeal gives judgment for the respondent, interest shall be allowed by the Court for such time as execution has been delayed by the appeal. C. S. U. C. c. 13, s. 50. Interest to be allowed.

## CERTIFICATE OF DECISION OF THE COURT.

**44.** The decision of the Court of Appeal shall be certified by the Registrar of the Court of Appeal to the proper officer of the Court below, who shall thereupon make all proper and necessary entries thereof, and all subsequent proceedings may be taken thereupon, as if the decision had been given in the Court below. C. S. U. C. c. 13, s. 12. The Clerk to certify result of appeals.

## LIMITATION OF TIME FOR APPEALING.

**45.** All appeals from a judgment, decision, rule, or order of either of the Superior Courts of Law shall be brought to hearing within one year after the giving of the judgment, decision, rule, or order appealed from, or after the entry of the judgment in respect to which error is alleged, or within such further time as the Court of Appeal may allow. 40 V. c. 7, *Sched. A.* (27). Time within which appeals from a Court of Law must be brought to a hearing.

**46.** In case of an appeal from the Court of Chancery, the appellant shall bring the same to a hearing if the appeal is from a decree or decretal order, within one year from the pronouncing thereof; and if the appeal is from an interlocutory order, not being a decretal order, then within six months from the pronouncing of the same, or within such further time in either case as may be allowed for the purpose by the Court of Appeal, upon special grounds shown to the satisfaction of the Court or Judge granting the same. C. S. U. C. c. 13, s. 55; 40 V. c. 7, *Sched. A.* (27). Time within which appeals from Court of Chancery must be brought to a hearing.

**47.** The time limited for appealing from a decree or order which, under any General Orders of the Court of Chancery, does not become absolute upon the same being pronounced, shall be computed from the time when the same does become absolute. C. S. U. C. c. 13, s. 56. Time to be reckoned from the decree or order becoming absolute.

**48.** In cases not otherwise provided for, an appeal against any judgment shall be commenced and prosecuted with effect within one year after the judgment has been entered of record, given or completed. 40 V. c. 7, *Sched. A.* (36). Limitation in cases not otherwise provided for.

## APPEALS TO HER MAJESTY, IN HER PRIVY COUNCIL.

**49.** In a case where the matter in controversy exceeds the sum or value of four thousand dollars as well as in a case When appeal may be to the Queen in Privy Council.

where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general and public nature affecting future rights, of what value or amount soever the same may be, an appeal shall lie to Her Majesty in Her Privy Council; and except as aforesaid no appeal shall lie to Her Majesty in Her Privy Council. C. S. U. C. c. 13, ss. 57 & 58.

Security to be  
given.

**50.** No such appeal shall be allowed until the appellant has given security in two thousand dollars, to the satisfaction of the Court appealed from, that he will effectually prosecute the appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is affirmed. C. S. U. C. c. 13, s. 59.

The execution  
to be stayed.

**51.** Upon the perfecting of such security, execution shall be stayed in the original cause. C. S. U. C. c. 13, s. 60.

The 27th sec-  
tion to apply.

**52.** The provisions of the twenty-seventh section of this Act shall apply to such appeal, and the completion of the security hereby required shall not have the effect of staying execution in the cause, in the different cases to which the said section relates, unless the provisions in the said section are complied with. C. S. U. C. c. 13, s. 61.

The Judges  
may approve  
of the security

**53.** Every Judge of the Court of Appeal shall have authority to approve of and allow the security to be given by a party who intends to appeal to Her Majesty in Her Privy Council, whether the application for such allowance be made during the sitting of the said Court, or at any other time. C. S. U. C. c. 13, s. 62.

Costs.

**54.** Costs awarded by Her Majesty in Her Privy Council, upon an appeal, shall be recoverable by the same process as costs awarded by the Court of Appeal. C. S. U. C. c. 13, s. 63.

#### FEES.

Fees.

**55.** In addition to all fees otherwise authorized to be levied on proceedings in cases brought to the Court of Appeal from the Superior Courts, the following fees shall be payable to the Crown in stamps, subject to the provisions of *The Act respecting Law Stamps* :

Rev. Stat. c.  
21.

On every appeal entered.....	\$4 00
On every judgment, decree, or order of the Court passed and entered .....	2 00

C. S. U. C. c. 33, s. 6, *Sched.*

#### GENERAL RULES.

The C. J. and  
Justices of  
Appeal may

**56.** The Chief Justice and Justices of Appeal or a majority of them, may from time to time make such General Rules and

Orders for the effectual execution of this Act, and of the intention and object thereof, and for fixing the costs to be allowed in respect of proceedings in the Court, and for regulating the different proceedings in appeal, as to them may seem expedient; and may also from time to time alter and amend any of the existing Rules, or any Rules made under the authority of this Act, and make other Rules instead thereof; and until such Rules are made, the present Rules and the existing practice and mode of proceeding in the Court shall continue in force. C. S. U. C. c. 13, s. 64; 37 V. c. 7, s. 52.

## CHAPTER. 39.

### An Act respecting the Courts of Queen's Bench and Common Pleas.

Short title, s. 1.  
Style and Jurisdiction, ss. 2-4.  
Seat of Courts, s. 5.  
Judges, ss. 6-11.  
Terms, ss. 11-14.  
Sittings in Banc out of Term, ss. 15-17.  
Return Days, s. 18.

Allowance to Sheriff of York for attending Term, s. 19.  
Vacation Sittings, ss. 20-24.  
Chambers, ss. 25-32.  
Trials at Bar, ss. 33-35.  
Clerks, ss. 36-52.  
Fees, s. 53.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as "*The Superior Courts of Law* Short title, Act."

#### STYLE AND JURISDICTION.

2. Her Majesty's Court of Queen's Bench for Ontario, and the Court of Common Pleas for Ontario, shall continue under the names aforesaid, and all commissions, rules, orders and regulations granted or made, in, by or respecting the said Courts, or the Judges or officers thereof, existing and in force when this Act takes effect, shall remain in force until altered or rescinded or otherwise determined. C. S. U. C. c. 10, s. 1; 34 V. c. 8, s. 2.

3. The said Court of Queen's Bench shall during the reign of a King be called "His Majesty's Court of King's Bench" Style or name of such Courts.



for Ontario," and during the reign of a Queen "Her Majesty's Court of Queen's Bench for Ontario." 34 V. c. 8, s. 1.

## Jurisdiction.

4. The said Courts shall be Courts of Record of original and co-ordinate jurisdiction, and shall respectively possess all such powers and authorities as by the law of England are incident to a Superior Court of civil and criminal jurisdiction; and shall have, use and exercise all the rights, incidents and privileges of a Court of Record, and all other rights, incidents and privileges as fully to all intents and purposes as the same were on the fifth day of December, 1859, used, exercised and enjoyed by any of Her Majesty's Superior Courts of Common Law at Westminster in England, and may and shall hold plea in all and all manner of actions, causes and suits as well criminal as civil, real, personal and mixed, and may and shall proceed in such actions, causes and suits by such process and course as are provided by law, and as shall tend with justice and despatch to determine the same; and may and shall hear and determine all issues of law; and may and shall also hear and (with or without a jury, as provided by law) determine all issues of fact that may be joined in any such action, cause or suit, and judgment thereon give, and execution thereof award in as full and ample a manner as might, at the said date, be done in Her Majesty's Courts of Queen's Bench, Common Bench, or, in matters which regard the Queen's revenue (including the condemnation of contraband or smuggled goods), by the Court of Exchequer in England. C. S. U. C. c. 10, s. 3.

## PLACE OF SITTING.

## Where to be held.

5. The said Courts shall be held at the City of Toronto. C. S. U. C. c. 10, s. 4.

## THE JUDGES.

## Chief Justices and Judges of.

6. The said Court of Queen's Bench shall consist of a Chief Justice, and two Puisne Justices; and the said Court of Common Pleas shall consist of a Chief Justice and two Puisne Justices; and such Courts respectively may be holden by any one or more of the Judges thereof in the absence of the others; and the Chief Justice and Justices of the said Courts respectively shall have, use and exercise all the rights, incidents and privileges of a Judge of a Court of Record, and all other rights, incidents and privileges as fully to all intents and purposes as the same were, prior to the 5th day of December, 1859, used, exercised or enjoyed by any of the Judges of any of Her Majesty's Superior Courts of Common Law at Westminster. C. S. U. C. c. 10, s. 5; 40 V. c. 8, s. 2.

## Precedence.

## Rev. Stat. c. 38, s. 6.

7. The Judges of the said Courts shall have rank and precedence in the manner provided by the sixth section of *The Act respecting the Court of Appeal*. See C. S. U. C. c. 10, s. 6.

8. The persons to be appointed Judges of the said Courts shall be Barristers-at-Law of at least ten years' standing at the Bar of Ontario. *See C. S. U. C. c. 10, s. 7, and B. N. A. Act, 1867, s. 99.* Persons eligible as Judges.

9. Every Judge of the said Courts, previous to entering upon the duties of his office, shall take the following oath to be administered to the Chief Justice of the said Courts respectively, by the Lieutenant-Governor in Council, and to the Puisne Judges in open Court, by the Chief Justice of the Court for which such Puisne Judge has been appointed. Oath of office of the Judges.

"I, \_\_\_\_\_ do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as Chief Justice (or one of the Puisne Judges), of the Court of \_\_\_\_\_ .  
"So help me God."

C. S. U. C. c. 10, s. 8.

10. The Chief Justice, or any of the Judges of the Court of Appeal, or any retired Judge of any of the Superior Courts, may sit in the Superior Courts of Law, upon the request of the Judges or Judge with or for whom he is so requested to sit; and the said Chief Justice or other Judge shall, while so sitting, have all the powers and authority of a Judge of the Court in which he is so sitting. *37 V. c. 7, s. 6. See also Rev. Stat., c. 38, s. 9.* Power to the Chief Justice and Judges to sit in the Superior Courts of Common Law.

#### TERMS.

11. The Terms of the said Courts shall, subject to the provisions hereinafter contained, annually be as follows:— Terms of Courts.

Hilary Term shall begin on the first Monday in February, and shall end on the Saturday of the following week;

Easter Term shall begin on the third Monday in May, and shall end on the Saturday of the second week thereafter;

Trinity Term shall begin on the first Monday after the twenty-first day of August, and shall end on the Saturday of the following week; and

Michaelmas Term shall begin on the third Monday in November, and end on the Saturday of the second week thereafter. *29-30 V. c. 40, s. 2; 36 V. c. 8, s. 53.*

12. In case it appears to the Judges of either of the said Courts or to any two of them, of whom the Chief Justice shall be one, that the number of days which are provided by law for holding any Term is not required, or is insufficient, for the due despatch of the business to be transacted by that Court in such Term, such Judges may from time to time, by rule or order, shorten the period for holding the Term in such Court to such period, not less than two weeks, or increase the length of the same, to any period, as the case may require. *39 V. c. 12, s. 1.* Judges may shorten or lengthen Terms.

Judges may  
dispense with  
Trinity Term.

**13.** Where in the opinion of the Judges of either of the said Courts it is not necessary for the dispatch of business pending in such Court, to hold sittings during Trinity Term in any year, the Judges of such Court may in Easter Term of such year, by Rule of Court from time to time made, direct that their Court shall not sit during the time appointed by the eleventh section of this Act for holding Trinity Term; and any motion for a rule nisi for a new trial or non-suit, or otherwise affecting any verdict which may be rendered at the sittings of Nisi Prius during the Summer Assizes, may be made before and heard by the Judge sitting for the full Court during Vacation, under sections twenty to twenty-four of this Act; and the rule, if granted, shall be set down for argument before the full Court in the following Term. 40 V. c. 8. s. 5.

Business in  
Trinity Term.

**14.** Neither of the said Courts shall transact in Trinity Term any business before the full Court, except in regard to matters arising subsequently to the Easter Term of the same year, and to any other matters which, under General Rules or otherwise, such Court may from time to time think fit to transact in said Trinity Term. 38 V. c. 9, s. 2.

Sittings in  
Banc in vaca-  
tion, on rule.

For what pur-  
poses.

Proviso.

**15.** The said Courts at their discretion, may hold sittings in Banc out of Term, by virtue of a Rule or Order of the Court respectively, to be made in or out of Term, for the hearing of such special cases or rules for new trials as may be named in a list to be attached to any such Rule or Order, and for giving of judgments in cases previously argued, and for disposing of such other business as the Court in its discretion may see fit; but no such sitting in Banc shall be appointed for or holden on any day between the first day of July and the twenty-first day of August in any year. 29-30 V. c. 40, s. 4.

Notice of such  
rules.

**16.** Notice of such Rules or Orders shall be given by affixing the same in some conspicuous place on the outside of the Court making the same, and in the office of the Clerk of the Crown and Pleas of the Court, and in the Judges' Chambers, at Osgoode Hall, six clear days, excluding Sunday or any other legal holiday, before the day appointed.

Form of  
notice.

2. Such notice may be to the following effect :—

COURT OF QUEEN'S BENCH (*or* COMMON PLEAS).

This Court will on the \_\_\_\_\_ day of \_\_\_\_\_ hold sittings, and will proceed on that and the following days, to hear and dispose of the cases mentioned in the subjoined list, and to give judgment in cases previously argued, and to dispose of any other business, as the Court may in its discretion see fit.

(Signed)

A. B.

Clerk of the Crown and Pleas.

(*List to be subjoined.*)

29-30 V. c. 40, s. 5; 40 V. c. 8. s. 3.

**17.** All judgments to be pronounced, and all Rules and Orders to be made by virtue of the two next preceding sections, shall have the same effect, to all intents and purposes, as if they had been pronounced in Term time. 29-30 V. c. 40, s. 7. Judgments in vacation.

**18.** The first and last days of each Term and every alternate day from the first, not including Sunday, shall be a return day; and the said Courts may in their discretion adjourn from any such return day to the next immediate return day. C. S. U. C. c. 10, s. 19. Return days.

**19.** From and out of the Consolidated Revenue Fund, there is hereby granted to Her Majesty, annually, a sum sufficient to enable Her Majesty to pay to the Sheriff of the County of York the sum of two dollars thirty-three and one-third cents per day for attending the said Court of Queen's Bench during its sittings in each Term. C. S. U. C. c. 10, s. 15. Allowance to Sheriff of York.

#### VACATION SITTINGS OF THE COURTS.

**20.** One Judge of each of the said Courts shall sit in open Court every week, as well in as out of Term, except during the Long Vacation, and except during the period from the twenty-fourth day of December to the sixth day of January thereafter, both days inclusive, for the purpose of disposing of all Court business which may be transacted by a single Judge. One Judge of each Court to sit in open Court every week, except in long vacation, &c.

**2.** When the business to be transacted does not appear to require more than one Judge of the said Courts to sit as aforesaid, a Judge of either of the said Courts may sit for both Courts and dispose of the business. 37 V. c. 7, s. 19.

**21.** The judgments, decrees, rules and orders made by a single Judge, in such case, shall have the force and effect of, and be deemed for all purposes to be, the judgments, decrees, rules and orders of the Court; and the judgments, decrees, rules and orders of any Judge, sitting separately as authorized by this Act, shall be deemed to be the judgments, decrees, rules and orders of the Court in which the action or other proceeding is pending, although the Judge pronouncing or making the same is not a Judge of such Court. 36 V. c. 8, s. 21, *last part*. Effect of judgments.

**22.** All rules, orders and decisions which are granted, made or pronounced by a Judge sitting alone under the foregoing provisions, shall be subject to be reviewed and reheard by the full Court; and the full Court may for that purpose be constituted of two Judges. 37 V. c. 7, s. 20. Rehearing on decision of single Judge.

**23.** The proceedings before a Judge sitting separately as aforesaid, shall show on their face in the motion paper, or in Style of proceedings before a single



Judge under  
section 20.

any judgment, decree, rule or order to be given or made, that the business was carried on before a single Judge, as follows: "In (*styling the Court*) Before Justice (*naming the Judge*). 36 V. c. 8, s. 22.

Powers to  
every Judge  
of Superior  
Courts.

**24.** Every Judge of the said Courts is hereby authorized to transact out of Court such business as may, according to the course and practice of the Court, be so transacted by a single Judge, relating to any suit or proceeding in either of the said Courts, or relating to the granting writs of *certiorari* or *habeas corpus*, or to the admitting of persons on criminal charges to bail, or to the approving of bonds with sureties when given in any matter of appeal from the judgment of either of the said Courts, or to the issuing of extents or other process for the recovery of debts due to Her Majesty, or relating to any other matter or thing usually transacted out of Court, in like manner as if the Judge transacting such business had been a Judge of the Court to which the same by law belongs. 33 V. c. 11, s. 4.

#### CHAMBERS.

Powers in  
Chambers, &c.,  
to every Judge  
of Superior  
Courts.

**25.** Every Judge of the said Courts is hereby authorized to transact such business at Chambers or elsewhere depending in either of the said Courts, as relates to matters over which the said Courts have a common jurisdiction, and as may according to the course and practice of the Court be transacted by a single Judge. 33 V. c. 11, s. 3.

A Judge to sit  
in Chambers.

**26.** The Judges of the said Courts shall, in rotation or otherwise as they may agree among themselves, sit in Chambers or elsewhere, and there transact any such business as may be transacted in either of the said Courts by a single Judge out of Court, whether such business be in the Court of which such Judge is a member or in the other Court, subject to the right of appeal to and of review by the full Court in which the matter is depending. C. S. U. C. c. 10, s. 10.

Anyone whilst  
acting as Judge  
of Assize in  
Toronto, may  
act as Judge in  
Chambers.

**27.** Any person acting as Judge of Assize and Nisi Prius in the City of Toronto, may, while so sitting or acting as such Judge, or while the sittings last, act as a Judge in Chambers in all matters as if he were a Judge of one of the Superior Courts of Law. 33 V. c. 11, s. 1; *See also Rev. Stat. c. 41, s. 10.*

Any one sit-  
ting as Judge  
of Assize may  
during sittings  
act as Judge in  
Chambers.

**28.** Any person acting as a Judge of Assize and Nisi Prius may, in and for the County for which he is acting, and while the sittings of the said Court last, act as a Judge in Chambers in all matters entered for trial before him, as if he were a Judge of one of the Superior Courts of Law. 33 V. c. 11, s. 2; *See also Rev. Stat. c. 41, s. 9.*

Judge may  
make rules

**29.** A majority of all the Judges of the said Superior Courts of Law, which majority shall include the two Chief Justices

or one of the Chief Justices and the senior of the Puisne Judges of the said Courts, may from time to time make and publish General Rules for the following purposes, that is to say :

(a) For empowering the Clerk of the Crown and Pleas of the Court of Queen's Bench, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as by virtue of any statute or custom, or by the rules of practice of the said Courts, or any of them respectively, are now or may be hereafter done, transacted or exercised by a Judge of either of the said Courts sitting at Chambers, and as shall be specified in any such rule, except in respect of matters relating to the liberty of the subject.

to empower Clerk of the Crown to act as Judge in Chambers,

(b) For regulating the attendance of the said Clerk at Chambers, the course of practice to be there pursued, and the scale of costs to be there adopted.

to regulate his attendance, and the practice and costs,

(c) For fixing the table of fees to be taken in respect of business to be transacted before the said Clerk at Chambers, and for abolishing or altering from time to time such table of fees.

to fix the fees.

33 V. c. 11, s. 5 ; 37 V. c. 7, s. 47.

**30.** Every Rule to be made under the preceding section shall be read aloud in open Court in each of said Courts, ten clear days at least before the day fixed for such Rule coming into operation. 33 V. c. 11, s. 6.

Promulgation of the rules.

**31.** Every order or decision made or given under this Act by the said Clerk of the Crown and Pleas sitting at Chambers, shall be as valid and binding on all parties concerned, as if the same had been made or given by a Judge sitting at Chambers—except that any person affected by any order or decision of the said Clerk may forthwith, or within such time as may be appointed by any Rules or Orders to be made under this Act, and subject to such conditions as to costs as may be provided under any such Rules or Orders, appeal from such decision to a Judge sitting at Chambers. 33 V. c. 11, s. 8.

Effect of decision of Clerk of the Crown.  
Appeal therefrom.

**32.** The words “ Judge’s order ” and “ order of a Judge,” and other like expressions in any Act of the Legislature of Ontario, when referring to an order of a Judge of either of the said Courts, shall include an order made by the said Clerk under the authority of the three next preceding sections, unless there is something in the context indicating a different meaning. 37 V. c. 7, s. 47.

Meaning of the words “ Judge’s order.”

#### TRIALS AT BAR.

**33.** The plaintiff and the defendant respectively, in any action in either of the said Courts, may, in the Term next after

Trials at bar on the part of suitors.

issue joined, apply to the said Courts respectively for a trial at bar, and each of the said Courts respectively may, in its discretion, upon hearing the parties, grant or refuse the same. C. S. U. C. c. 10, s. 21.

On the part of  
the Crown.

**34.** In all cases in which the Crown may be actually or immediately interested, a trial at bar may be had as of right upon, and shall be regulated and governed by the same principles as in similar cases in England. C. S. U. C. c. 10, s. 22

When trial to  
be had.

**35.** In case any trial at bar is directed, the Judges of either of the said Courts may appoint such day or days for the trial thereof as they think fit, and the time so appointed, if in Vacation, shall, for the purposes of such trial, be deemed and taken to be a part of the preceding Term. C. S. U. C. c. 10, s. 23.

#### CLERKS.

Appointment  
and duties of  
Clerks.

**36.** The Lieutenant-Governor may, from time to time, appoint, during pleasure, to each of the said Courts separately, a Clerk of the Crown and Pleas, and to both of the said Courts jointly, a Clerk of the Process, and to either of said Courts, such other clerks and officers as the business of the Courts respectively may, from time to time, require; and such officers and clerks shall, in addition to any of the duties usually performed by the like officers and clerks, perform such duties as the Courts may from time to time direct. 40 V. c. 7, *Sched. A* (37).

Deputy Clerks  
of the Crown.

**37.** Except in the County of York, the several Clerks of the County Courts shall be *ex officio* Deputy Clerks of the Crown and Pleas in each of the Superior Courts of Law. C. S. U. C. c. 10, s. 26.

The Clerks to  
give security.

**38.** The Clerks of the Crown and Pleas, the Clerk of the Process, and the Deputy Clerks of the Crown and Pleas in the Superior Courts of Law, shall, within one month next after their appointment, give security to Her Majesty, in such sum, and with so many sureties, and in such form as the Lieutenant-Governor in Council directs, conditioned respectively, for the due performance of the duties of their office. C. S. U. C. c. 10, s. 30.

Consequences  
of neglecting  
to do so.

**39.** The neglect by any such Clerk or Deputy Clerk to give such security shall render his appointment void; but the forfeiture of office shall not affect any act done by him during the time he actually continues to hold his appointment. C. S. U. C. c. 10, s. 31.

Who to ap-  
prove of the  
sureties.

**40.** The Lieutenant-Governor shall in his discretion approve of the security and sureties so given by each principal Clerk;

and the Judge of the County Court having first certified his approval in writing of the security and sureties given by the Deputy Clerk of the Crown for his County, the Lieutenant-Governor shall in his discretion approve of the security and sureties so given by such Deputy Clerk; and such securities, when executed and approved, shall be duly recorded in the manner provided by *The Act respecting Public Officers*, and shall then be deposited in the office of the Provincial Treasurer. C. S. U. C. c. 10, s. 32.

To be recorded and deposited as provided by Rev. Stat. c. 15, s. 10.

41. If any surety in any such security dies or ceases to reside in Ontario, or becomes insolvent, the Clerk or Deputy Clerk shall, within one month after his knowledge of the fact, or after being thereto required by the Treasurer of the Province, give new security in manner hereinbefore provided, and the omission to give such new security shall render void the appointment of the Clerk or Deputy Clerk so omitting, but the forfeiture of office shall not affect any act done by him during the time he actually continues to hold his appointment. C. S. U. C. c. 10, s. 33.

The death or removal of a surety provided for.

42. The Clerks of the Crown and Pleas and the Clerk of the Process respectively shall keep their offices in Osgoode Hall, in the City of Toronto. C. S. U. C. c. 10, s. 34.

Principal offices to be held at Osgoode Hall.

43. The Clerk of the Process shall have a separate seal for sealing writs in each of the said Courts, to be approved by the Chief Justice of the Court, and he shall seal therewith and sign all writs and process issued from such Courts respectively. C. S. U. C. c. 10, s. 35.

Duties of the Clerk of the Process.

44. The Clerk of the Process shall keep the Deputy Clerks of the Crown and Pleas supplied with blank writs and process of all descriptions sealed and signed by him and to be filled up and issued by them; and he shall in like manner keep the Clerks of the Crown and Pleas supplied with all writs and process other than those which he is himself required to issue; and he shall have a reasonable allowance for printing, procuring and transmitting blank forms of writs and process, and for necessary books and stationery. C. S. U. C. c. 10, s. 36.

To supply Deputy Clerks of the Crown with blank writs;

And also the Chief Clerks.

45. The fees payable on all writs and process issued by the Clerk of the Process from the said Courts shall form part of the Consolidated Revenue Fund of the Province, and shall be payable in stamps subject to the provisions of *The Act respecting Law Stamps*. C. S. U. C. c. 10, ss. 40 & 41.

Fees on writs and process.

Rev. Stat. c. 21.

46. The Clerk of Process shall make to the Treasurer of the Province quarterly returns, verified by his affidavit, of all writs and process issued by him in suits brought at Toronto, or supplied by him to the Clerks and Deputy Clerks of the Crown to be issued by them. C. S. U. C. c. 10, s. 39.

The Clerk of Process to make quarterly returns.



Where  
Deputy  
Clerk's offices  
to be kept.

**47.** Each Deputy Clerk of the Crown and Pleas shall, if proper accommodation is afforded him, keep his office in the Court House of his County, and until he can obtain such accommodation he shall keep his office in some convenient place in the County Town. C. S. U. C. c. 10, s. 37.

Office hours,  
Summer vaca-  
tions.

**48.** Except between the first day of July and the twenty-first day of August, every Deputy Clerk's office shall be kept open from ten o'clock in the morning until three o'clock in the afternoon, holidays excepted; and between the first day of July and the twenty-first day of August, such offices shall be kept open from nine in the morning until noon. C. S. U. C. c. 10, s. 38; 39 V. c. 7, s. 13.

Salaries, &c.

**49.** There shall be charged upon and paid out of the Consolidated Revenue Fund of this Province, the yearly sums following as and for the salaries of the Clerks of the said Courts that is to say:—

To each Clerk of the Crown and Pleas .....	\$1600 00
To the Process Clerk .....	\$1400 00
To each Senior Clerk .....	\$1000 00
To each Junior Clerk .....	\$ 600 00

C. S. U. C. c. 10, s. 27.

Salaries of  
Deputy Clerks  
of the Crown.

**50.** The Lieutenant-Governor in Council may appoint that sums not in any case exceeding six hundred dollars nor less than one hundred dollars yearly shall be paid out of moneys to be hereafter voted by the Legislature for the purpose, as and for the salaries of the Deputy Clerks of the Crown respectively. 36 V. c. 8, s. 63.

To be paid  
quarterly.

**51.** All the said salaries, and the salaries of all offices of the said Courts that are payable out of the Consolidated Revenue Fund, shall be paid monthly, free and clear from all taxes and deductions whatever, and in proportion for any broken period, to any of the said clerks or officers newly appointed, resigning or removed or to the executors or administrators of a clerk or officer dying within the month. C. S. U. C. c. 10, s. 28; 40 V. c. 8, s. 4.

The taking of  
fees prohi-  
bited.

**52.** Unless specially authorized, neither of the Clerks of the Crown and Pleas, nor any of their Deputies, nor the said Process Clerk, nor the Clerk in Chambers, shall take for his own use or benefit, directly or indirectly, any fee or emolument whatever save the salary to which he may be entitled by law; and all the fees heretofore payable upon proceedings in the offices of the said Clerks shall continue to be payable, and shall form part of the Consolidated Revenue Fund of this Province, and shall be payable to the Crown in stamps, subject to the provisions of

Rev. Stat. c.  
21.

*The Act respecting Law Stamps.* C. S. U. C. c. 10, s. 29; 37 V. c. 7, s. 92; 27-8 V. c. 5, s. 2. *See* 40 V. c. 8, s. 3.

## FEES.

**53.** In addition to all fees, otherwise authorized to be levied <sup>Fees.</sup> on proceedings in the said Courts, the following fees shall form part of the Consolidated Revenue Fund of the Province, and shall be payable to the Crown in stamps, subject to the <sup>Rev. Stat. c. 21.</sup> provisions of *The Act respecting Law Stamps.*

	\$	cts.
On every writ of summons or capias, and on every other writ or other document of what nature or description soever, having the seal of the Court affixed thereto . . . . .	0	50
On every judgment entered . . . . .	0	60
On every certificate of judgment . . . . .	0	50
On setting down on the paper for argument of every demurrer, special case, points reserved, special verdict or appeal case . . . . .	0	30
On every record of Nisi Prius entered for trial or assessment . . . . .	2	00
On every rule of Court issued . . . . .	0	20
On taxation of every bill of costs . . . . .	0	20

C. S. U. C. c. 33, s. 6, *Sched.*; C. S. U. C. c. 11, s. 20; 27-8 V. c. 5, s. 21; 33 V. c. 9. *See* 40 V. c. 8, s. 3.

## CHAPTER 40.

## An Act respecting the Court of Chancery.

Short title, s. 1.

Court continued, s. 2.

Seal, s. 3.

Judges, ss. 4-7.

Officers, ss. 8-17.

Prisons of the Court, s. 18.

Sittings, ss. 19-22.

Circuits for Examination of witnesses and Hearing, ss. 23-27.

Chambers, ss. 28-29.

Accountant's office, ss. 30-33.

Jurisdiction of Court, ss. 34-88.

Generally, ss. 34-38.

Injunctions, s. 39.

Awarding damages, s. 40.

Wills, &c., ss. 41-42.

Alimony, ss. 43-48.

Forfeiture for breach of covenant to insure, ss. 49-51.

Partition, ss. 52-56.

Lunatics, ss. 57-74.

Inquisition by Commission, ss. 59, 60.

Inquisition without Commission, ss. 61-63.

Subject of inquiries limited to certain facts, s. 64.

Declaration of Lunacy on summary application, s. 65.

Protection of property of Lunatics, ss. 66-72.

General Provisions, ss. 73, 74.

Infants, ss. 75-83.	Service of proceedings, ss. 92-96.
Removal of Guardians and Trustees, s. 84.	Security for costs, ss. 97.
Settled Estates, ss. 85.	Stay of proceedings where another suit pending, s. 98.
In matters cognizable of Law, ss. 86-87.	Trial of Issues, s. 99.
In appeal from Commissioners to investigate trespasses to Crown Lands, s. 88.	Witnesses, s. 100.
Registration of proceedings, ss. 89-91.	Vesting Orders, s. 101.
	Costs in abated suits, s. 102.
	Lower Scale Costs, s. 103.
	Fees, ss. 104, 105.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as "*The Chancery Act*."

Court of Chancery continued **2.** The Court of Chancery now existing is hereby continued, and shall be called "The Court of Chancery of Ontario." C. S. U. C. 12, s. 1; 34 V. c. 8 s. 3.

#### SEAL.

The Lieut-Governor to determine the seal to be used by the Court. **3.** The Lieutenant-Governor in Council may, from time to time, determine and declare the seal to be used in the Court, and by which its decrees and proceedings shall be certified and authenticated. C. S. U. C. c. 12, s. 2.

#### THE JUDGES.

A Chancellor and two Vice-Chancellors to preside over the Court. **4.** The Court shall be presided over by a Chief Judge, to be called the Chancellor of Ontario, and two additional Judges, to be called Vice-Chancellors. C. S. U. C. c. 12, s. 3.

Persons to be appointed Judges. **5.** The persons to be appointed as Judges of the Court of Chancery shall be Barristers-at-law of not less than ten years' standing at the Bar of Ontario. See C. S. U. C. c. 12, s. 4.

Rank and precedence of Judges. Rev. Stat. c. 38, s. 6. **6.** The said Chancellor and Vice-Chancellors shall have rank and precedence as provided by the sixth section of *The Act respecting the Court of Appeal*. C. S. U. C. c. 12, s. 4; 37 V. c. 7, s. 5.

Oath of office **7.** Every Judge of said Court shall, previous to executing the duties of his office, take the following oath, which oath shall be administered to the Chancellor before the Lieutenant-Governor in Council, and to the Vice-Chancellors in open Court in presence of the Chancellor:

"I, \_\_\_\_\_, do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as Chancellor (or Vice-Chancellor). So help me God."

C. S. U. C. c. 12, s. 8.

## OFFICERS.

8. The Lieutenant-Governor may, from time to time appoint, during pleasure, one Master in Ordinary, one Accountant, one Registrar, one Referee in Chambers, one Clerk of Records and Writs, two Assistant-Registrars, and such other clerks and officers as the business of the Court may, from time to time, require; and such officers and clerks shall, in addition to any of the duties usually performed by the like officers and clerks, perform such duties as the Court may from time to time, by General Order or otherwise, direct. 40 V. c. 7, *Sched. A* (38).

Appointment  
of officers.

Duties.

9. The Referee in Chambers shall perform the duties indicated in section twenty-eight of this Act, and shall, for the purpose of expediting business in the Master's office, take such references, or parts of references, made or usually made, to the Master in Ordinary, and none other, as the said Master certifies that he is unable, by reason of press of business, or otherwise, presently to proceed with; and the Referee in Chambers shall in addition, perform such other duties of a ministerial nature as the Judges of the said Court may by any General Order assign to him. 34 V. c. 10, s. 1; 40 V. c. 7, *Sched. A* (39).

Duties of Referee in Chambers.

10. Any officer of the said Court shall, for the purposes of any proceedings directed by the Court to be taken before him, have full power to administer oaths, to take affidavits, to receive affirmations, and to examine parties and witnesses, as the Court may direct. 34 V. c. 10, s. 6; 40 V. c. 7, *Sched. A* (40).

Administration of oaths.

11. The Judges may, from time to time, under the seal of the Court, appoint, and at their discretion remove, local Masters and Deputy Registrars (both of which offices may be held by one person, in such places respectively out of Toronto, as the Judges may think expedient for the purpose of promoting as far as practicable the local administration of justice; and the Judges may likewise in manner aforesaid, appoint and remove Commissioners for administering oaths and taking affidavits and depositions in the said Court with the powers formerly possessed by Masters Extraordinary and Examiners; and also an Usher to attend on the Court and the respective Judges thereof, during the sittings of the Court and Judges respectively for the transaction of business, and to execute such process of the Court as may be directed to him. C. S. U. C. c. 12, s. 13.

The Court may appoint and remove local Masters and Deputy Registrars.

Also Commissioners for taking affidavits.

And an Usher.

12. Every officer of the Court before he enters upon his duties shall take and subscribe the following oath, which oath shall be administered by the Judges, or one or more of them in open Court:

Oath of office of officers.

"I, A. B., of \_\_\_\_\_, do hereby solemnly swear that I will, according to the best of my skill, learning, ability and judgment, well and faith-



fully execute and fulfil the duties of the office of Master, (*or as the case may be*), without favour or affection, prejudice or partiality, to any person or persons whomsoever : So help me God."

C. S. U. C. c. 12, s. 17.

Who to administer.

**13.** When not convenient to a person appointed to any office to attend at Toronto, to take the oath of office, the Court may direct the oath to be taken before the Judge of the County Court of the County in which such officer resides, and the oath shall be certified by such Judge and filed amongst the records of the Court at Toronto. C. S. U. C. c. 12, s. 18.

Oath of office of Local Master or Deputy Registrar, before whom to be sworn, etc.

**14.** The oath of office of a Local Master or Deputy Registrar may be taken before any Commissioner authorized to administer affidavits in the Court of Chancery, and shall be certified by the Commissioner and filed amongst the records of the Court at Toronto. 36. V. c. 5, s. 5.

Salaries of officers provided for

**15.** There shall be paid out of the Consolidated Revenue Fund of the Province, the yearly sums following as and for the salaries of the following officers and clerks that is to say :—

The Master in Ordinary .....	\$3000
The Registrar .....	1600
The Referee in Chambers .....	2000
The Clerk in the Master's Office .....	500
The Clerk of the Registrar .....	500

2. The said salaries and the salaries of all officers of the said Court which are payable out of the Consolidated Revenue Fund shall be paid monthly, free from all taxes and deductions, but the payment to be made in each case on the first day of payment which happens after the right thereto accrues, shall be a rateable proportion of a month's salary, according to the time then elapsed since the accrual of the right ; and in case of a vacancy in the office of such Master, Registrar, Referee, Clerk, or other officer as aforesaid, the person making the vacancy, his executors or administrators, shall be entitled to a proportional part of his salary according to the time elapsed between the vacancy and the last payment. C. S. U. C. c. 12, s. 14 ; 34 V. c. 10, s. 5 ; 40 V. c. 8, s. 4.

Not allowed fees.

**16.** Neither the Master in Ordinary, the Registrar, the Referee, the Accountant, nor any Clerk appointed as aforesaid, shall take for his own benefit, directly or indirectly, any fee or emolument, save the salary to which he may be entitled by law ; but the like sums and fees heretofore payable on proceedings in the offices of the said officers shall continue to be payable ; and all such fees shall form part of the Consolidated Revenue Fund of the Province, and shall be payable in stamps, subject to the provisions of *The Act respecting Law Stamps*. C. S. U. C. c. 12, s. 11. 34 V. c. 10, s. 4.

How fees to be payable.

Rev. Stat. c. 21.

2. The Local Masters, the Deputy Registrars and the Commissioners may retain to their own use all the fees of office which they respectively receive not payable to the Crown or belonging to any fee fund, and need not account to the Crown for any portion of such fees. C. S. U. C. c. 12, s. 15. Local officers may take fees.

17. Sheriffs, Deputy Sheriffs, gaolers, constables and other peace officers, shall aid, assist and obey the Court and the Judges thereof respectively in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever by any General or other Order of the Court or of a Judge thereof, required so to do. C. S. U. C. c. 12, s. 19. Sheriffs, gaolers, etc., to be officers of the Court.

18. All gaols in Ontario shall be prisons of the Court. C. S. U. C. c. 12, s. 76. Gaols to be prisons of the Court.

#### SITTINGS OF THE COURT.

19. The Court shall be holden at the City of Toronto or in any other place from time to time appointed by proclamation of the Lieutenant-Governor. C. S. U. C. c. 12, s. 20. The Court to sit at Toronto.

20. The Judges shall sit together for all business not directed by General or other Orders to be transacted before a single Judge, and the Chancellor, or, if he is absent, the Senior Vice-Chancellor shall preside. C. S. U. C. c. 12, s. 21. The Judges to sit together in certain cases.

21. The Judges may sit separately, either at the same time or at different times, and one Judge shall sit in open Court every week, except during the Long Vacation, and except during the period from the twenty-fourth day of December to the sixth day of January thereafter, both days inclusive, for the hearing and disposing of such matters and the transaction of such business as may from time to time in that behalf be directed by General or other Orders of the Court, and of all Court business which may be transacted by a single Judge; and every Judge so sitting separately, whether at Toronto or elsewhere, shall have all the powers of the full Court, subject to any General Orders in that behalf; and the decrees and orders made by a single Judge in such cases shall have the force and effect of, and be deemed for all purposes to be, decrees and orders of the Court, but shall be subject to re-hearing before the full Court or otherwise, in such cases as the Court, by General Orders, or otherwise, from time to time directs or appoints; and the full Court may for that purpose be constituted of two Judges. C. S. U. C. c. 12, s. 22; 37 V. c. 7, ss. 19 & 20. To sit separately for certain purposes.

22. The Chief Justice, or any of the Judges of the Court of Appeal, or any retired Judge of any of the Superior Courts, may sit in the Court of Chancery upon the request of the Judges or Judge with or for whom he is so requested to sit; and the said Chief Justice, or other Judge shall, while so sitting, have all the Power to other Judges to sit in Chancery.

powers and authority of a Judge of the Court of Chancery. 37 V. c. 7, s. 6. *See also Rev. Stat. c. 38, s. 9.*

## CIRCUITS.

The Judges to make Circuits for taking evidence and other purposes.

**23.** The Judges, or one or more of them, shall also take Circuits for the transaction of such business of the Court as it may be practicable and conducive to the interests of suitors and the convenient administration of justice to dispose of on such Circuits; and for that purpose, the Court, or one or more of the Judges thereof, may hold Sittings for the purposes of taking evidence and hearing causes and other matters, and transacting other business. C. S. U. C. c. 12, s. 23.

Appointment of days and County Towns for Circuit Sittings.

**24.** The Judges of the Court of Appeal and of the Courts of Queen's Bench, Chancery and Common Pleas jointly, or a majority of them, shall appoint the days, and name the County Towns at which such Circuit Sittings shall be held. 37 V. c. 7, s. 21.

Judges of Court of Chancery may hold Sittings in addition to those appointed for the regular Circuits.

**25.** In case it appears to the Judges of the Court of Chancery or a majority of them after the Circuits have been arranged and appointed under section twenty-four of this Act, that it would be in furtherance of the administration of justice to hold other Sittings in addition to those appointed under the said section, the said Chancery Judges or a majority of them may appoint, and hold Sittings of the Court of Chancery at any other County Town, in addition to those at which Sittings were appointed under the said section. 40 V. c. 8, s. 6.

Place in County Town where Court to be held.

**26.** Such Sittings may, at the discretion of the Court or of the Judge who is to hold the same, be held in the Court House of the County Town in which the same are appointed to be held, or in such other place in the County Town as the Judge selects; and the Judge shall in all respects have the same authority as a Judge at Nisi Prius in regard to the use of the Court House, Gaol and other buildings or apartments set apart in the County for the administration of justice. C. S. U. C. c. 12, s. 23.

Judge or retired Judge of Superior Court, County Court Judge or Queen's Counsel, may hold sittings in Chancery.

**27.** Any Sitting of the Court for the hearing of causes may be held by a Judge of either of the Superior Courts of Law, or a retired Judge of any of the Superior Courts, or by one of the Judges of any County Court in Ontario, or by any one of Her Majesty's Counsellors learned in the law, appointed for Upper Canada or for the Province of Ontario, upon such Judge or Counsel being requested by the Chancellor, or one of the Vice-Chancellors or by the Chief Justice or one of the Justices of the Court of Appeal to attend for the purpose; and such Judge or Counsel while holding the sitting shall possess, exercise and enjoy all the powers and authorities of a Judge of the Court of Chancery, and may give his decision either during the Sitting or after-

wards; and such decision shall have the like force and effect and be subject to rehearing and appeal in the same manner as the decision of a Judge of the Court of Chancery. 37 V. c. 7, ss. 23 & 28; 29-30 V. c. 39, ss. 1 & 2; 39 V. c. 7, s. 2. *Sched. B.*

## CHAMBERS.

28. The said Court may make and publish General Orders for the following purposes: Court to make General Orders,

(1.) For empowering the Referee in Chambers to do any such things, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as, by virtue of any statute or custom or by the practice of the said Court, is now or may hereafter be done, transacted or exercised by a Judge of the said Court sitting in Chambers, and as may be specified in any such order, except in matters relating to— for empowering the Referee to transact certain business.

(a) Granting writs of Habeas Corpus, and adjudicating upon the return thereof;

(b) Appeals and applications in the nature of appeals;

(c) Proceedings under the sixty-first to sixty-fifth sections inclusive of this Act;

(d) Applications for writs of arrest;

(e) Applications for advice under the Trustee Acts;

(f) Matters affecting the custody of children; and

(g) Proceedings under the eighty-fifth section of this Act;

But in case all the Judges of the Court are absent from the City of Toronto, or there is no Judge sitting in Chambers upon the day on which any motion in respect to any of such excepted matters is returnable, the Referee may adjourn such motion upon such terms as he may consider proper;

2. For conferring upon any of the Local Masters of the Court all or any of the powers which the said Court is hereinbefore authorized to confer upon the said Referee in Chambers, and to make such regulations as to filing and keeping records, and the transmission of the same, or of copies thereof, to an officer of the Court at Toronto, as to the Court may seem expedient. 34 V. c. 10, s. 2; 37 V. c. 7, s. 48; 40 V. c. 7, *Sched. A* (41). For conferring certain powers on the Local Masters.

29. Every order or decision made or given under this Act by the said Referee in Chambers, or a Local Master, shall be as valid and binding on all parties concerned as if the same had been made or given by a Judge sitting at Chambers—except Decision of the Referee or Local Master to be binding.



Appeal there- that it shall be lawful for any person affected by any order  
from. or decision of such officer, to appeal therefrom to a Judge  
in Chambers within such time and in such manner as may be  
appointed by any General Orders to be made in that behalf.  
34 V. c. 10, s. 3.

## ACCOUNTANT'S OFFICE.

Securities in  
hands of the  
Accountant of  
the Court of  
Chancery  
transferred to  
the Referee in  
Chancery.

**30.** Until an Accountant is appointed to the said Court or until the Court by General Order, as in the next section mentioned, directs,—all mortgages, stocks, funds, annuities and securities whatsoever, on the twenty-sixth day of June, one thousand eight hundred and seventy-six, standing in the name of the Accountant of the Court of Chancery, or in his custody or power as such Accountant in respect of his office, together with all the interest and estate of the said Accountant in the lands and premises embraced in such mortgages or other securities, are hereby declared to be, and from and after the said day to have been, vested in the Referee in Chambers, subject to the same trusts as they were on the said day respectively subject to; and it is hereby declared to have been lawful from and after the said day, and to be hereafter lawful, for the same to be proceeded on by and in the name of the said Referee in right of his office, by any action or suit, or in any other manner, or to be assigned, transferred or discharged by the said Referee, as the same might on the said day have been proceeded on, assigned, transferred or discharged by or in the name of the said Accountant. 40 V. c. 8, s. 7.

Whenever  
there is no Ac-  
countant secu-  
rities standing  
in the name of  
the Account-  
ant to be  
vested in Re-  
feree or other  
officer.

**31.** In case of there being at any time no Accountant of the Court of Chancery, all mortgages, stocks, funds, annuities and securities whatsoever theretofore standing in the name of such Accountant, or in his custody or power as such Accountant, in respect of his office, together with all the interest and estate of the said Accountant in the lands and premises embraced in such mortgages or other securities, shall become and be, by force of this Act, vested in the Referee in Chambers of the said Court for the time being, as such Referee, or in such other officer as the Court, by General Order, may, from time to time, direct, subject to the same trusts as they may then respectively be subject to, and the same shall and may be proceeded on by and in the name of the said Referee or other officer, in right of his office, by any action or suit, or in any other manner, or may be assigned, transferred or discharged by the said Referee or other officer, as the same might theretofore have been proceeded on, assigned, transferred or discharged by or in the name of the said Accountant. 40 V. c. 8, s. 8.

On death, &.,  
of Accountant  
property to  
vest in his suc-  
cessor.

**32.** In all cases in which any interest in real or personal estate, effects or property is vested in the Accountant for the time being of the Court of Chancery, as such Accountant and in respect of his office, all such real and personal estate, effects and property whatsoever, upon the death, resigna-

tion or removal from office of each and every Accountant of the said Court from time to time, and as often as the case happens, and the appointment of a successor takes place, shall, subject to the same trusts as the same were respectively subject to, vest in the succeeding Accountant by force of this Act; and shall and may be proceeded on by any action or suit at Law or in Equity, or in any other manner, or may be assigned, transferred or discharged in the name of such succeeding Accountant, as the same might have been proceeded on, assigned, transferred or discharged, by or in the name or names of such Accountant so resigning, removed or dying, his heirs, executors or administrators. 34 V. c. 10, s. 8.

**33.** All moneys that become subject to the control and distribution of the Court, shall be paid in the name of the Accountant of the Court, or if there is no Accountant in the name of the Referee in Chambers or such other officer as the Court by General Order may from time direct, into the hands of such person or body corporate, or shall be invested in the name of the Accountant, or if there is no Accountant in the name of such Referee or other officer, in the public funds of the Dominion of Canada or of this Province, or in such other securities as the Court may from time to time direct; and all interest arising from the sums so deposited or invested, shall be added to the principal sum, and be distributed therewith to the persons entitled to receive the same. C. S. U. C. c. 12, s. 72; 40 V. c. 8, s. 9.

Money in  
Court how to  
be disposed of

## JURISDICTION OF THE COURT.

### GENERAL JURISDICTION.

**34.** The Court shall have the like jurisdiction and powers as by the laws of England were on the fourth day of March, 1837, possessed by the Court of Chancery in England in respect of the matters hereinafter enumerated, that is to say: Jurisdiction.

1. In all cases of fraud and accident;
2. In all matters relating to trusts, executors and administrators, copartnership and account, mortgages, awards, dower, infants, idiots, lunatics and their estates;
3. To stay waste;
4. To compel the specific performance of agreements;
5. To compel the discovery of concealed papers or evidence, or such as may be wrongfully withheld from the party claiming the benefit of the same;
6. To prevent multiplicity of suits;

7. To stay proceedings in a Court of Law prosecuted against equity and good conscience ;

8. To decree the issue of letters patent from the Crown to rightful claimants ;

9. To repeal and avoid letters patent issued erroneously or by mistake or improvidently or through fraud. C. S. U. C. c. 12, s. 26.

Rules of decision in such cases.

**35.** The rules of decision in the said matters shall, except where otherwise provided, be the same as governed the Court of Chancery in England in like cases on the fourth day of March, 1837, and the Court shall possess power to enforce obedience to its orders, judgments and decrees, to the same extent as was then possessed by the Court of Chancery in England. C. S. U. C. c. 12, s. 25.

Jurisdiction in cases where no adequate remedy at law.

**36.** The said Court shall have the like jurisdiction and power as the Court of Chancery in England possessed on the tenth day of June, 1857, as a Court of Equity to administer justice in all cases in which there existed no adequate remedy at Law. C. S. U. C. 12, s. 26.

Jurisdiction in matters of Revenue.

**37.** The Court shall have the like equitable jurisdiction in matters of Revenue as the Court of Exchequer in England possessed on the eighteenth day of March, 1865. 28 V. c. 17, s. 2.

Effect of judgments on equitable defences at law.

**38.** If the defendant in any suit at law sets up any equitable defence, and judgment is given against him upon the equitable defence, the judgment shall be pleadable as a good bar and estoppel against any bill filed by the defendant in Equity against the plaintiff or representative of the plaintiff at Law, in respect to the same subject matter which has been brought into judgment by such equitable defence at Law ; but this section shall not be construed as declaring that such judgment at Law on an equitable defence has not been heretofore a good bar to a suit in Equity on the same subject matter. 29-30 V. c. 42, s. 3.

Proviso.

#### INJUNCTIONS.

Injunctions to stay waste, &c.

**39.** The Court may grant an injunction to stay waste in a proper case, notwithstanding that the party in possession claims by an adverse legal title. C. S. U. C. c. 12, s. 27.

#### AWARDING DAMAGES IN CERTAIN CASES.

Where jurisdiction exists in certain cases

**40.** In all cases in which the Court has jurisdiction to entertain an application for an injunction against a breach of any

covenant, contract or agreement or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract or agreement, the Court, if it thinks fit, may award damages to the party injured either in addition to or in substitution for such injunction or specific performance, and such damages may be ascertained in such manner as the Court may direct, or the Court may grant such other relief as it may deem just. 28 V. c. 17, s. 3.

Court may award damages, etc.

#### WILLS AND MATTERS TESTAMENTARY.

**41.** The Court shall have jurisdiction to try the validity of last wills and testaments, whether the same respect real or personal estate, and whether probate of the will has been granted or not, and to pronounce such wills and testaments to be void for fraud and undue influence or otherwise, in the same manner and to the same extent as the Court has jurisdiction to try the validity of deeds and other instruments. C. S. U. C. c. 12, s. 28.

The Court may try the validity of wills.

**42.** The Court shall have jurisdiction in matters testamentary as provided in the twenty-eighth to thirtieth sections inclusive of "*The Surrogate Courts Act*."

In matters testamentary under Rev. Stat. c. 46, ss. 28-30.

#### ALIMONY.

**43.** The Court shall have jurisdiction to decree alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her, by the law of England, to a decree for restitution of conjugal rights; and alimony when decreed shall continue until the further order of the Court. C. S. U. C. c. 12, s. 29.

Alimony may be decreed.

**44.** An order or decree for alimony may be registered in any Registry Office in Ontario, and such registration shall, so long as the order or decree registered remains in force, bind the estate and interest of every description which the defendant has in any lands in the County or Counties where such registration is made, and operate thereon for the amount or amounts by such order or decree ordered to be paid, in the same manner and with the same effect as the registration of a charge of a life annuity, created by the defendant on his lands, would; and such registration may be effected through a certificate of such order or decree by the Clerk of Record and Writs, or by any Deputy Registrar or other officer authorized by the Court to sign the same; and such certificate may be under the seal of the Court or under the seal of office (if any) of the officer signing the same. 28 V. c. 17, s. 4; 37 V. c. 7, s. 51; 40 V. c. 7, *Sched. A* (42).

Decree for alimony may be registered in registry office, and thus bind lands.



In suits for alimony a writ of arrest may be issued.

**45.** In suits for alimony, the Court or a Judge thereof may in a proper case, order a writ of arrest to issue at any time, after the bill has been filed, and shall, in the order, fix the amount of bail to be given by the defendant, in order to procure his discharge. C. S. U. C. c. 12, s. 30; c. 24, s. 9.

Limit of bail in suits of alimony.

**46.** In case an order is made for a writ of arrest, in a suit for alimony, the amount of the bail required shall not exceed what may be considered sufficient to cover the amount of future alimony for two years, besides arrears and costs, but may be for less at the discretion of the Court. C. S. U. C. c. 12, s. 30; c. 24, s. 10.

No costs to be paid *de die in diem*;

**47.** In no suit for alimony shall any costs be ordered to be paid *de die in diem* by the defendant, beyond the amount of the cash disbursements properly made by the plaintiff's solicitor. 32 V. c. 18, s. 1.

nor any costs by defendant beyond disbursements.

**48.** In no suit for alimony, in which the plaintiff fails to obtain a decree for alimony, shall any costs be decreed to be paid by the defendant beyond the amount of the cash disbursements properly made by the plaintiff's solicitor. 32 V. c. 18, s. 2.

#### RELIEF AGAINST FORFEITURE FOR BREACH OF COVENANT TO INSURE.

Relief against forfeiture for breach of covenant to insure in certain cases. Imp. Act 22-23 V. c. 35, s. 4.

**49.** The Court shall have power to relieve against a forfeiture for breach of a covenant or condition in any lease to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach has, in the opinion of the Court, been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the Court in conformity with the covenant to insure, upon such terms as to the Court may seem fit. 29 V. c. 28, s. 5.

When relief is granted, the same to be recorded. Imp. Act 22-23 V. c. 35, s. 5.

**50.** The Court, where relief is granted, shall direct a record of such relief having been granted to be made by endorsement on the lease or otherwise. 29 V. c. 28, s. 6.

To what leases preceding provisions apply. Imp. Act 22-23 V. c. 35, s. 9.

**51.** The two preceding sections shall be applicable in the case of leases for a term of years absolute, or determinable on a life or lives or otherwise, and also in the case of a lease for the life of the lessee or the life or lives of any other person or persons. 29 V. c. 8, s. 9.

#### PARTITION.

Court of Chancery to have on bill filed same powers as it has on ap-

**52.** In any suit in the Court of Chancery for partition or sale of the estate of joint tenants, tenants in common or coparceners, where any of the persons interested in the lands whereof partition or sale is sought are unknown to the plaintiff,

or have not been heard of for three years or upwards, the Court shall have the same jurisdiction that, in proceedings under "*The Partition Act*," it possesses for the purpose of binding the interests of such persons and dealing with the estate of such of them as by reason of long continued absence may reasonably be believed to be dead; and the like proceedings may be taken in such suit for the said purposes as might be taken upon a petition under the said Act; and every deed or vesting order made in any such suit shall have the same effect as a deed or vesting order made in proceedings under the said Act. 40 V. c. 8, s. 38.

plication  
under Rev.  
Stat. c. 101.

**53.** In regard to the partition and sale of estates of joint tenants, tenants in common and coparceners, the Court, in addition to the powers which it possesses under "*The Partition Act*," and the preceding section, shall possess the same jurisdiction as by the laws of England on the tenth of August, one thousand eight hundred and fifty, was possessed by the Court of Chancery in England, and also as by the laws in force in Ontario is possessed by the Courts of Queen's Bench and Common Pleas. C. S. U. C. c. 12, s. 45; 32 V. c. 33, s. 43.

And also  
jurisdiction  
which Su-  
perior Courts  
of Law have  
in partition.

**54.** In such cases, any decree, order or report by which a partition or sale is declared or effected, or any deed executed by any officer of the Court or other person appointed by the Court to execute the same, to give effect to such partition or sale, shall have the same effect at Law and in Equity as the Record of a return in the Court of Queen's Bench or Common Pleas has in matters of partition, or as Sheriff's deeds now have in other cases. C. S. U. C. c. 12, s. 46; 40 V. c. 7, *Sched. A* (43).

Effect of de-  
cree for.

**55.** Any partition or sale made by the Court shall be as effectual for the apportioning or conveying away of the estate or interest of any married woman, infant or lunatic, party to the proceedings by which the sale or partition is made or declared, as of any person competent to act for himself. C. S. U. C. c. 12, s. 47; 32 V. c. 33, s. 44.

Estates of  
married wo-  
men, etc., to  
be bound.

**56.** An office copy of the decree, order or report declaring or effecting a partition or sale, shall be sufficient evidence in all Courts of the partition declared thereby, and of the several holdings by the parties of the shares thereby allotted to them. C. S. U. C. c. 12, s. 48; 32 V. c. 33, s. 44.

Office copy of  
decree, etc.,  
to be evidence

#### LUNATICS.

**57.** The word "lunatic" in the subsequent sections of this Act shall include an idiot or other person of unsound mind. C. S. U. C. c. 12, s. 32.

The word  
"lunatic"  
extended.

**58.** In the case of lunatics, and their property and estates the jurisdiction of the Court shall include that which in Eng-

Cases of luna-  
tics and their  
estates.

land is conferred upon the Lord Chancellor by a Commission from the Crown, under the Sign Manual. C. S. U. C. c. 12, s. 31.

*Inquisition by Commission.*

Traverse of in-  
quisition of  
lunacy.

**59.** Where a Commission has been issued and an inquisition thereupon returned into Court, by which a person is found lunatic, in case anyone entitled to traverse the inquisition desires to do so, he may, within three months from the day of the return and filing of the inquisition, present a petition for that purpose to the Court, and the Court shall hear and determine the petition subject to the following provisions.

Time to be  
limited.

2. In every order giving effect to such petition, the Court shall limit a time not exceeding six months from the date of the order, within which the person desiring to traverse, and all other proper parties, shall proceed to the trial of the traverse; but the Court may under the special circumstances of any case, and upon a petition being presented for that purpose, and upon the circumstances being substantiated upon affidavit, allow the traverse to be had or tried after the time limited; and in such special case, the Court may make such orders as seem just.

May be tried  
in any Court  
Recorder be-  
fore one of the  
Chancery  
Judges.

3. The trial may be ordered to take place in any Court of Record in Ontario, or before a Judge of the Court of Chancery, with the aid of a jury, according to the circumstances of the case and the situation of the parties. C. S. U. C. c. 12, s. 34 (1-2).

What security  
the traverser  
shall give.

4. The Court may order that the person to traverse, if he is not the party who has been found lunatic, shall, within one month after the date of the order, file, with such officer as the Court may appoint, a bond, with one or more sureties, in favour of the Registrar for the time being, or other officer appointed by the Court, and conditioned for all proper parties proceeding to the trial of the traverse within the time limited. Such bond before the filing thereof shall be approved of and certified to be sufficient by the Judge of the County Court of the County in which the parties reside, or by one of the Judges or Masters of the Court of Chancery. C. S. U. C. c. 12, s. 34 (3). 39 V. c. 7, s. 2, *Sched. B*; 40 V. c. 7, *Sched. A* (44).

When the tra-  
verser barred.

5. Every person who does not present his petition, or who neglects to give the security, or who does not proceed to the trial of the traverse, within the times respectively limited therefor, and the heirs, executors and administrators of every such person, and all others claiming through him, shall be absolutely barred of the right of traverse. C. S. U. C. c. 12, s. 34 (4).

**60.** In case the Court is dissatisfied with the verdict returned upon a traverse, the Court may order a new trial, or more than one new trial as in other cases. C. S. U. C. c. 12, s. 36.

New trials may be granted.

*Inquisition without Commission.*

**61.** Instead of issuing a Commission of Lunacy the Court in lieu thereof may, with or without the aid of a jury (which the Court or a Judge thereof may cause to be empanelled as in other cases) hear evidence and inquire into and determine upon the alleged lunacy; but the alleged lunatic shall have a right in such cases to demand that the inquiry be submitted to a jury or the Court may order that the inquiry be had before any Court of Record. 28 V. c. 17, s. 5; *first part*.

As to proceedings in lunacy.

Alleged lunatic may require a jury.

**62.** Where any such inquiry is had by the Court, with or without the aid of a jury, or before a Court of Record, no traverse shall be allowed, but the Court, if dissatisfied with the finding of a jury, may, at the instance of any party who would be entitled to traverse an inquisition under commission of lunacy, direct a new trial or new trials from time to time upon application therefor made to the Court within three months from the time the verdict is rendered, or such further time as the Court, under special circumstances, permits, and subject to such directions and upon such conditions as to the Court seem proper, and the Court may order any such new trial to be had before the same Court in which the verdict was rendered or before any other Court. 28 V. c. 17, s. 6.

No traverse allowed but new trial may be granted by Court.

**63.** On every such inquiry, the alleged lunatic, if he is within the jurisdiction of the Court, shall be produced, and shall be examined at such times and in such manner either in open Court or privately before the jury retire to consult about their verdict, as the presiding Judge may direct, unless the Court ordering such inquiry has, beforehand, by order, dispensed with such examination. 28 V. c. 17, s. 7.

Alleged lunatic may be examined openly or privately as Judge directs.

*Subject of Inquiries limited to certain facts.*

**64.** Every inquiry, under a Commission of Lunacy, or before any such Court of Record, shall be confined to the question, whether or not the person who is the subject of inquiry is, at the time of such inquiry, of unsound mind and incapable of managing himself or his affairs, and the verdict rendered by a jury shall, in every case, be returned to the Court, certified by the Judge before whom the inquiry has been had, and shall be final as to the question on such inquiry, unless the same is set aside. 28 V. c. 17, s. 5, *last part*.

Verdict thereon.

*Summary Applications.*

**65.** The Court or a Judge may, on sufficient evidence, declare

Declaration of



lunacy without a person a lunatic without the delay or expense of issuing a commission to enquire into the alleged lunacy, except in cases of commission.  
 Proceedings in reasonable doubt; and any person who might traverse an inquiry in lieu of traverse to the same effect, may move against the order containing the declaration, or may appeal therefrom, as the case requires; and the right so to move or appeal shall as to time be subject to the same rules as the right to traverse. C. S. U. C. c. 12, ss. 33 & 35; 40 V. c. 7, *Sched. A* (45).

*Protection of Property of Lunatics.*

Property of Lunatics. **66.** In order to afford due protection to the property of lunatics, the following provisions shall in every case be observed:

The Committee to file an inventory of present property. 1. The Committee of the estate shall, within six months after being appointed, file in the office of the Clerk of Records and Writs or of such officer as may be appointed by the Court for that purpose a true inventory of the whole real and personal estate of the lunatic, stating the income and profits thereof, and setting forth the debts, credits and effects of the lunatic, so far as the same have come to the knowledge of the Committee;

Also, of after discovered property. 2. If any property belonging to the estate is discovered after the filing of an inventory, the Committee shall file a true account of the same from time to time, as the same is discovered;

To be verified on oath. 3. Every inventory shall be verified by the oath of the Committee; and

Security to be given by the Committee. 4. The Committee of the estate shall give two or more responsible persons as sureties, in double the amount of the personal estate, and of the annual rents and profits of the real estate, for duly accounting for the same once in every year, or oftener if required by the Court, and for filing the inventory aforesaid; and the security shall be taken by bond or recognizance in the name of any officer appointed by the Court for that purpose, in such manner as the Court or a Master thereof may direct, and the same shall be filed in the office of any officer appointed by the Court for that purpose. C. S. U. C. c. 12, s. 37 (1-4); 39 V. c. 7, s. 2, *Sched. B*; 40 V. c. 7, *Sched. A* (46).

When estate not sufficient to pay debts. **67.** Wherever the personal estate of a lunatic is not sufficient for the discharge of his debts, the following steps may be taken:—

Committee to apply for leave to mortgage or sell, &c. 1. The Committee of his estate shall petition for authority to mortgage, lease or sell so much of the real estate as may be necessary for the payment of such debts;

2. Such petition shall set forth the particulars and amount of the estate real and personal of the lunatic, the application made of any personal estate, and an account of the debts and demands against the estate ;

What the petition is to contain.

3. The Court shall, by one of the Masters or otherwise, inquire into the truth of the representations made in the petition, and hear all parties interested in the real estate ;

The truth of, to be inquired into.

4. If it appears to the Court that the personal estate is not sufficient for the payment of debts, and that the same has been applied to that purpose as far as the circumstances of the case render proper, the Court may order the real estate or a sufficient portion of it to be mortgaged, leased or sold either by the Committee or otherwise ;

If personal estate insufficient, real estate may be disposed of.

5. The Court shall direct the Committee to discharge such debts, out of the money so raised, and the Court may order the Committee to execute conveyances of the estate, and to give security for the due application of the money, and to do such other acts as may be necessary in such manner as the Court may direct ; and

Debts to be paid out of the proceeds,

6. In the application of any moneys so raised, the debts shall be paid in equal proportion without giving any preference to those which are secured by sealed instruments. C. S. U. C. c. 12, s. 38 (1-6).

rateably and without preference.

68. Where the personal estate, and the rents, profits and income of the real estate of the lunatic, are insufficient for his maintenance or that of his family, or for the education of his children, an application may be made by the Committee, or by any member of the family of the lunatic, that the Committee be authorized or directed to mortgage or sell the whole or part of the real estate, as may be necessary ; upon which the like reference and proceedings shall be had, and a like order made, as for the payment of debts. C. S. U. C. c. 12, s. 39.

If effects not sufficient to maintain the lunatic, his real estate may be applied.

69. In case of any mortgage, lease or sale being made, the lunatic and his heirs, next of kin, devisees, legatees, executors, administrators and assigns, shall have the like interest in the surplus which remains of the money raised as he or they would have in the estate, if no mortgage, lease or sale had been made ; and such money shall be of the same nature and character as the estate mortgaged, leased or sold ; and the Court may make such orders, as are necessary for the due application of the surplus. C. S. U. C. c. 12, s. 40.

Surplus sums how to be applied or disposed of.

70. Where a lunatic is seised or possessed of real estate, by way of mortgage, or as a trustee for others in any manner, the Committee may apply to the Court for authority to convey such real estate to the person entitled thereto, in such manner

Where a lunatic is trustee or mortgagee his Committee may act, and how far.

as the Court may direct; and thereupon the like proceedings shall be had as in the case of an application to sell the real estate; and the Court upon hearing all the parties interested may order a conveyance to be made; and on the application, by bill or petition, of any person entitled to a conveyance, the Committee may be compelled by the Court, after hearing all parties interested, to execute the conveyance. C. S. U. C. c. 12, s. 41.

Instruments executed by the Committee to be valid.

**71.** Every conveyance, mortgage, lease and assurance made by the Committee under direction of the Court, pursuant to any of the provisions of this Act, shall be as valid as if executed by the lunatic when of sound mind. C. S. U. C. c. 12, s. 42.

Specific performance how compelled in such cases.

**72.** The Court may compel the specific performance of any contract made by a lunatic while capable of contracting, and may direct the Committee to execute all necessary conveyances for the purpose; and the purchase money, or so much thereof as remains unpaid, shall be paid to the Committee or otherwise as the Court directs. C. S. U. C. c. 12, s. 43.

#### *General Provisions.*

As to rehearing and appeal.

**73.** Any order by a single Judge in a matter of lunacy, shall be subject to rehearing, and to appeal to the Court of Appeal within the same times and under the same conditions as in other cases in the said Court of Chancery. 28 V. c. 17, s. 8.

By whom the Court may order costs in lunacy to be paid.

**74.** The Court may order the costs, charges and expenses of and incidental to any petition for a commission of lunacy or to any inquiry, inquisition, issue, traverse, order, direction, conveyance or other proceeding in lunacy, to be paid either by the party or parties presenting such petition or prosecuting the same or such inquiry or other proceeding in lunacy, or by the party or parties opposing the same, or out of the estate of the lunatic or alleged lunatic, or partly in one way and partly in another. 28 V. c. 17, s. 9; C. S. U. C. c. 12, s. 44.

#### INFANTS.

The custody of infants.

Rev. Stat. c. 130.

**75.** The Court shall also have jurisdiction respecting the custody of infants in the cases and subject to the provisions mentioned in *The Act respecting the Custody of Infants*. C. S. U. C. c. 12, s. 49.

A sale of the estates of infants may be authorized.

**76.** Where an infant is seised or possessed of or entitled to any real estate in fee, or for a term of years, or otherwise howsoever, in Ontario, and the Court is of opinion that a sale, lease or other disposition of the same or of any part thereof, is necessary or proper for the maintenance or education of the infant, or that, by reason of any part of the property being exposed to

waste and dilapidation, or to depreciation from any other cause, his interest requires or will be substantially promoted by such disposition, the Court may order the sale, or the letting for a term of years, or other disposition of such real estate or any part thereof, to be made under the direction of the Court or one of its officers, or by the guardian of the infant, or by any person appointed by the Court for the purpose, in such manner and with such restrictions as to the Court may seem expedient, and may order the infant to convey the estate as the Court thinks proper. C. S. U. C. c. 12, s. 50.

**77.** But no sale, lease or other disposition shall be made against the provisions of any will or conveyance by which the estate has been devised or granted to the infant or for his use. C. S. U. C. c. 12, s. 51.

No sale contrary to a devise.

**78.** The application shall be in the name of the infant by his next friend, or by his guardian; but shall not be made without the consent of the infant if he is of the age of fourteen years or upwards. C. S. U. C. c. 12, s. 52. 40 V. c. 7, *Sched. A.* (47).

The application to be by next friend or guardian.

**79.** Where the Court deems it convenient that a conveyance should be executed by some person in the place of an infant, the Court may direct some other person in the place of the infant to convey the estate. C. S. U. C. c. 12, s. 53.

When a substitute for an infant may be appointed.

**80.** Every such conveyance whether executed by the infant or some person appointed to execute the same in his place, shall be as effectual as if the infant had executed the same, and had been of the age of twenty-one years at the time. C. S. U. C. c. 12, s. 54.

Deeds executed in behalf of infants to be valid.

**81.** The moneys arising from any such sale, lease or other disposition, shall be laid out, applied and disposed of in such manner as the Court directs. C. S. U. C. c. 12, s. 55.

The Court to direct the application of the proceeds.

**82.** On any sale or other disposition so made, the money raised, or the surplus thereof, shall be of the same nature and character as the estate sold or disposed of; and the heirs, next of kin, or other representatives of the infant, shall have the like interest in any surplus which may remain of the money at the decease of the infant, as they would have had in the estate sold or disposed of if no sale or other disposition had been made thereof. C. S. U. C. c. 12, s. 56.

The quality of surplus moneys upon sale of real estate.

**83.** If any real estate of an infant is subject to dower, and the person entitled to dower consents in writing to accept in lieu of dower any gross sum which the Court thinks reasonable, or the permanent investment of a reasonable sum in such manner that the interest thereof be made payable to the person entitled to dower during her life, the Court may direct the payment of such sum in gross or the investment of such other

In cases of dower a composition may be made.



sum, out of the proceeds of the sale of the real estate of the infant. C. S. U. C. c. 12, s. 57.

#### REMOVAL OF GUARDIANS AND TRUSTEES.

Removal of guardians and trustees.

**84.** The Court shall also have power to remove testamentary guardians and trustees, for the same causes as it has power to remove other guardians and trustees. 40 V. c. 8, s. 31 (3).

#### SETTLED ESTATES.—SPECIAL CASES.

Jurisdiction of Court of Chancery in respect to leases, settled estates, estates of infants and special cases.

**85.** The Court shall have the same jurisdiction as the Court of Chancery in England had on the eighteenth day of March, 1865 in regard to leases and sales of settled estates, and in regard to enabling infants, with the approbation of the Court, to make binding settlements of their real and personal estate on marriage; and in regard to questions submitted for the opinion of the Court in the form of special cases on the part of such persons, as may by themselves, their committees or guardians, or otherwise, concur therein. 28 V. c. 17, s. 1.

#### IN MATTERS COGNIZABLE AT LAW.

Court of Chancery to have jurisdiction in matters cognizable at law; but the suit may be transferred to law.

**86.** The Court of Chancery shall also have jurisdiction in all matters which would be cognizable in a Court of Law: but in case at any stage of a cause in Chancery for a matter cognizable in a Court of Law, it appears to the Court or a Judge thereof that the cause may for any reason be more conveniently, expeditiously, or inexpensively carried on or dealt with in a Court of Law, the Court of Chancery or a Judge thereof may order the cause to be transferred to such one of the Courts of Common Law as the said Court or Judge may think proper under the provisions of the twenty-first section of "*The Administration of Justice Act*". 36 V. c. 8, s. 32.

Rev. Stat. c. 49, s. 21.

No objection to proceedings in Chancery to establish title that plaintiff has remedy at law.

**87.** Where a suit is instituted, or where a petition is filed in the Court for the purpose of establishing the title of the plaintiff or petitioner to any real property, no objection to such suit or proceeding shall be allowed upon the ground that the plaintiff or petitioner should first have sued at law, or would have an adequate and complete remedy at law by action of ejectment or otherwise; and if it appears upon the hearing or other determination of such suit or proceeding that the plaintiff or petitioner is entitled to the possession of such real property, he may obtain an order against the defendant or respondent for the delivery of such possession, and writs of execution shall issue accordingly. 36 V. c. 8, s. 31.

#### IN APPEALS UNDER REV. STAT. CHAP. 27.

Appeal to lie against judgment of Commissioners to

**88.** The Court shall also have jurisdiction on any appeal from the judgment or decision of the Commissioners under *The Act to prevent Trespasses to Public Lands*, as provided

in said Act ; and the Court may revise, alter, affirm or annul such decision, or order further inquiry, or direct an issue to be tried at Law or before the said Court of Chancery or a Judge thereof with the assistance of a jury, and may make such order respecting costs and other matters as seems reasonable and just ; and the decree of the Court on the appeal shall be conclusive on the party appealing and on the Commissioners. C. S. U. C. c. 12 s. 62 ; *See also Rev. Stat. c. 27, s. 19.*

prevent trespasses to public lands to the Court of Chancery, under Rev. Stat. c. 27.

## REGISTRATION.

**89.** Certificates of Chancery proceedings for registration may be signed by the Registrar of the Court, or by the Clerk of Records and Writs, or by any Deputy Registrar, or by any other official authorized by the Court to sign the same ; and such certificates may be under the seal of the Court, or under the seal of office (if any) of the officer signing the same. 37 V. c. 7, s. 51 ; 40 V. c. 7, *Sched. A* (48).

Certificates in Chancery for registry, who may sign.

**90.** The filing of a bill or the taking of a proceeding, in which bill or proceeding any title or interest in land is brought in question, shall not be deemed notice of the bill or proceeding to any person not being a party thereto, until a certificate signed by one of the officers in the preceding section mentioned, has been registered in the Registry office of the County or other Registration Division in which the land is situate, which certificate may be in the following form :—

A bill filed, &c., not notice unless certificate registered.

“ I certify that in a suit or proceeding in Chancery between A. B. of and C. D. of some title or interest is called in question in the following land (*describing it*). ”

Form of certificate.

Dated at (*stating date and place*).

But no certificate shall be required to be registered in any suit or proceeding for foreclosure or sale upon a registered mortgage. C. S. U. C. c. 12, s. 64 ; 31 V. c. 20, s. 57.

Not necessary in foreclosure cases.

**91.** Every decree affecting land may be registered in the Registry Office of the County or other Registration Division where the land is situate, on a certificate signed by one of the officers in section eighty-nine mentioned, setting forth the substance and effect of the decree, and the land affected thereby. C. S. U. C. c. 12, s. 65.

Decree affecting lands may be registered.

## SERVICE OF PROCEEDINGS.

**92.** In any suit instituted in the Court by a mortgagee or other person having a charge on real property, for the foreclosure or sale of property, and to which suit any judgment creditor of the mortgagor, or of the person liable to the charge, is a defendant, personal service on such defendant shall not be neces-

Service of proceedings for foreclosure or sale may be on attorney-at-law in certain cases.

sary, and it shall be sufficient to serve his attorney in the action at law in which the judgment has been recovered, with the process of the Court, whether the same be an office copy of the bill or an office copy of the decree or decretal order, or any other order or notice which the Court by General Order may direct, and whether the same be issued by the Court or by any officer thereof; but the plaintiff in any such suit may elect to serve the judgment creditor personally instead of serving the attorney. C. S. U. C. c. 12, s. 70; 40 V. c. 7, *Sched. A* (49).

Service on absentees.

**93.** An absent defendant or respondent may be served at any place out of the jurisdiction of the Court, with a copy of any bill or proceeding, without an application being previously made to the Court for the allowance of such service, and the service shall be allowed on proof to the satisfaction of the Court that the same was duly made. C. S. U. C. c. 12, s. 71; 40 V. c. 7, *Sched. A* (50).

Mode of proceeding against absent defendant.

**94.** Where a defendant or respondent in any suit or matter is absent from the Province or cannot be found therein to be served, the Court may authorize proceedings to be taken against him according to the practice of the Court in the case of a defendant, whose residence is unknown, or in any other manner that may be provided or ordered, if the Court, under the circumstances of the case, deems such mode of proceeding conducive to the ends of justice. 28 V. c. 17, s. 12.

Endorsement of receipt of process, &c.; non-service, re-delivery to plaintiff, costs of service.

**95.** Upon the delivery of any copy of a bill or information in the Court of Chancery, at the office of any Sheriff, to be served by him, he, his Deputy or Clerk, shall endorse thereon the time when it was so delivered; and in case the bill or information is not fully and completely served within ten days after such delivery, the plaintiff, his attorney or agent shall be entitled to receive back the same; and the Sheriff, Deputy Sheriff or Clerk, shall endorse thereon the time of the delivery; and the cost of the mileage and service of the bill or information by any literate person afterwards shall, in case the person to be served was at any time during such ten days within the County, be allowed in the taxation of costs, as if the service had been by the Sheriff or his officer. 37 V. c. 7, s. 83.

Failure by Sheriff to re-deliver.

**96.** If the Sheriff being applied to, neglects or refuses to return the copy of the bill or information, after the expiration of the ten days, the plaintiff may procure another copy of the bill or information, and the costs of the first or other copy not returned may be charged against and recovered from the Sheriff, by the plaintiff or his attorney. 37 V. c. 7, s. 84.

#### SECURITY FOR COSTS.

Additional cases in which

**97.** In addition to any cases in which a defendant in any suit is now entitled to obtain security for costs from a plaintiff, se-

curity for costs may be granted to the defendant or applicant in any suit or proceeding in which it is made to appear satisfactorily to the Court in which such suit or proceeding has been instituted or taken, or to any Judge in Chambers, that the plaintiff has brought a former suit or proceeding for the same cause which is pending either in Ontario or in any other country, or that he has judgment or rule or order passed against him in such suit or proceeding, with costs, and that such costs have not been paid; and the Court or Judge may thereupon make such order staying the proceedings until security is given as to the Court or Judge may seem meet. 29-30 V. c. 42, s. 1.

the defendant may obtain security for costs.

#### STAY OF PROCEEDINGS WHERE ANOTHER SUIT PENDING.

**98.** If any suit is brought in the Court of Chancery for any cause of action for which any suit or action has been brought and is pending between the same parties and their representatives in any place or country out of Ontario, the Court or any Judge thereof may make an order to stay all proceedings in the Court of Chancery until satisfactory proof is offered to the Court or Judge that the suit or action so brought in such other place or country out of Ontario is determined or discontinued. 29-30 V. c. 42, s. 4.

Stay of proceedings if suit for same cause is pending out of Ontario.

#### TRIAL OF ISSUES BY JURY.

**99.** In any case in which the Court requires an issue to be tried by a jury, it shall not be necessary to commence any feigned action in a Court of Law; but upon an office copy of the decree or order directing the trial of the issue, being entered for trial in the same manner as a *Nisi Prius* record is entered, the issue shall be tried at the Assizes, or at the sittings of a County Court, in the same manner as issues are tried in actions brought in the Superior Courts of Law or in the County Courts, and the finding of the jury shall be endorsed upon such office copy and signed by the presiding Judge, and the office copy shall then be transmitted to the Registrar of the Court of Chancery; or instead of directing an issue to be tried at Law, the Court may try the same without the intervention of a Court of Common Law, by the unanimous verdict of twelve jurors duly sworn for the trial of such issue, and may issue a precept or order directed to the Sheriff of any County the Court sees fit, requiring him to strike and summon a jury for that purpose; and at the trial, one Judge or more of the Court of Chancery may sit or preside. C. S. U. C. c. 12, s. 69; c. 31, s. 2.

Issues out of Chancery may be tried without feigned issues at law.

Or by the Court of Chancery or a Judge thereof.

#### WITNESSES.

**100.** All witnesses in any matter pending before the Court, or before any Master thereof, shall give their testimony  *viva voce*, and be subject to examination by Counsel, in the pre-

Witnesses to be examined *viva voce*.



sence of one or more of the Judges, or of such Master, unless it is otherwise ordered by the Court, or Master, or the Referee in Chambers, on special grounds, or with the consent of the parties in the suit or controversy to which the testimony relates. C. S. U. C. c. 12, s. 24; 40 V. c. 7, *Sched. A.* (51).

#### VESTING ORDERS.

Vesting order,  
effect of.

**101.** In every case in which the Court has authority to order the execution of a deed, conveyance, transfer or assignment of any property, real or personal, the Court may make an order or a decree vesting such real or personal estate in such person or persons, and in such manner, and for such estates, as would be done by any such deed, conveyance, assignment or transfer if executed; and thereupon the order or decree shall have the same effect both at Law and in Equity as if the legal or other estate or interest in the property had been actually conveyed, by deed or otherwise, for the same estate or interest, to the person in whom the same is so ordered to be vested, or in the case of a *chose in action*, as if such *chose in action* had been actually assigned to such last-mentioned person. C. S. U. C. c. 12, s. 63.

#### COSTS IN ABATED SUITS.

Suit abated  
may be revived  
for costs.

**102.** Wherever any decree or order has been made for payment of costs in any suit, and the suit afterwards becomes abated, any person interested under the decree or order may revive the suit, and thereupon prosecute and enforce the decree or order, and so from time to time, as often as any abatement happens. 40 V. c. 8, s. 19.

#### LOWER SCALE COSTS.

How lower  
scale costs  
regulated.

**103.** In any suit or proceeding, which, before the nineteenth day of December, 1868, might have been brought, instituted or carried on under the equity jurisdiction of the County Courts, and which may now be brought or carried on in the Court of Chancery, the fees, costs and charges payable in respect thereof, shall be on a scale bearing, as far as practicable, the same proportion to the fees, costs and charges payable in other suits or proceedings in the said Court of Chancery, as the fees, costs and charges in actions in County Courts bear to the fees, costs and charges in actions in the Superior Courts of Common Law. 32 V. c. 6, s. 4 (2). *See Rev Stat., c. 49, ss. 45 & 47.*

#### FEEES

Fees to be  
taken to form

**104.** A fee of ten cents shall be paid to the officer with whom pleadings are directed to be filed, on the filing of every bill and of every answer or demurrer, in addition to the other fees and

charges thereon; and such fee shall be paid into an account to be called "The Suitors' Fee Fund Account," which account shall be kept and managed as may from time to time be directed by the Court, and the sums, at the credit of such account, shall be applied by the Court as may be necessary for the protection of infants and other persons not *sui juris* or *non compos mentis*, on whose behalf proceedings may be had in the Court, or may, by the Court, be ordered to be had in other Courts. C. S. U. C. c. 12, s. 73; 28 V. c. 17, s. 10.

**105.** In addition to all other fees authorized by law to be imposed, levied and collected on proceedings in the Court of Chancery the following fees shall be payable to the Crown in stamps, subject to the provisions of *The Act respecting Law Stamps*.

On filing every Bill .....	\$2 40
On passing and entering every Decree or Decretal Order.....	1 00
On every Certificate of Bill filed, on every Certificate of Decree or Decretal Order made, on every Subpœna, and on every other Writ or Certificate issued under the seal of the Court .....	0 50

C. S. U. C. c. 33, s. 6, *Sched. A.*  
39 V. c. 7, s. 1, *Sched.*

## CHAPTER 41.

An Act respecting Courts of Assize and Nisi Prius  
and of Oyer and Terminer and General Gaol  
Delivery.

Courts, when and where to be held, ss. 1-4.  
By whom to be held, ss. 5-12.  
Clerks of Assize, ss. 13-19.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## THE COURTS.

Courts of Assize &c., when and where to be held

Additional Courts, in County of York.

Additional Court in County of Wentworth.

By commission or otherwise.

Judge to appoint days for holding Courts of Assize.

Sittings of Assize and Nisi Prius may be distinct from Courts of Oyer and Terminer and General Gaol Delivery

Special Commissions may issue.

Common Law Judges may appoint Court

1. Courts of Assize and Nisi Prius, and of Oyer and Terminer and General Gaol Delivery shall be held in every County and Union of Counties in each and every year, in the Vacation between Hilary and Easter Terms, and the Vacation between Trinity and Michaelmas Terms. 29-30 V. c. 40. s. 3; 36 V. c. 8, s. 53.

2. In addition to the two Courts so to be held for the County of York, there shall in every year, be a third such Court in and for the said County of York, in the Vacation between Michaelmas and Hilary Terms, and a fourth such Court in and for the said County, in the part of the Vacation following Easter Term, between Easter Term and the first day of July. 29-30 V. c. 40, s. 3; 36 V. c. 8, s. 52.

3. In addition to the two Courts so to be held for the County of Wentworth, there shall be a third such Court held in each and every year in and for the said County of Wentworth, in the Vacation between Michaelmas and Hilary Terms. 36 V. c. 8, s. 55.

4. All the said Courts shall be held, with or without commission, as to the Lieutenant-Governor may seem best. 29-30 V. c. 40, s. 3; 36 V. c. 8, ss. 52 & 55.

2. The Judges of the Courts of Appeal, Queen's Bench, Chancery and Common Pleas jointly, or a majority of them, shall appoint the days upon which Courts of Assize and Nisi Prius, and of Oyer and Terminer and General Gaol Delivery, shall be held. 37 V. c. 7, s. 21.

3. The sittings of the Courts of Assize and Nisi Prius in any County may, in the discretion of the Judges appointing the days therefor, or of the Judge who has been appointed to preside or is presiding thereat, be held separate and apart from the Courts of Oyer and Terminer and General Gaol Delivery, either on the same day or on a different day. 37 V. c. 7, s. 26.

4. The Lieutenant-Governor may issue Special Commissions of Oyer and Terminer or of General Gaol Delivery for the trial of offenders, whenever he deems it expedient. C. S. U. C, c. 11, s. 6.

5. The Judges of the Courts of Queen's Bench and Common Pleas, or of either of those Courts, may appoint Courts of Assize

and Nisi Prius, to be held without commission, in any County in the Province, as often and at such times as they see fit, for the trial of causes which are to be tried by a Judge without a jury. 37 V. c. 7, s. 22.

of Assize in any County for issues to be tried without a jury.

6. If no commissions are issued, the said Courts or either of them shall be presided over by one of the Chief Justices or Judges of the Superior Courts of Law or by the Chief Justice or one of the Justices of the Court of Appeal; or in their absence by a retired Judge of any of the Superior Courts, or by a Judge of the Court of Chancery, or by a Judge of any County Court in Ontario, or by one of Her Majesty's Counsel learned in the law appointed for Upper Canada, or for the Province of Ontario, upon such Judge or Counsel being requested by any one of the Chief Justices or Judges of the Superior Courts of Law, or by the Chief Justice, or one of the Justices of the Court of Appeal, to attend for that purpose. C. S. U. C. c. 11, s. 3; 37 V. c. 7, ss. 3, 23 & 26; 39 V. c. 7, s. 2, & *Sched. B.*; 40 V. c. 7, *Sched. A* (52).

Who may preside.

7. In case commissions are issued, they shall always contain the names of the Chief Justices and Judges of the Superior Courts of Law; and may also contain the names of any of the Judges of any of the County Courts, and of any of Her Majesty's Counsel learned in the law appointed for Upper Canada or for the Province of Ontario; and the said Courts shall be presided over by one of the Chief Justices or Judges of the Superior Courts of Law, or in their absence by one of such County Court Judges or Counsel. C. S. U. C. c. 11, s. 2.

Commissions, to whom they may issue.

Who to preside.

2. It shall not be necessary to name any Associate Justices in any Commissions of Oyer and Terminer and General Gaol Delivery, or that any Associate Justices should be nominated to, or attend or be present at, any Court of Oyer and Terminer and General Gaol Delivery. C. S. U. C. c. 11, s. 5.

Associate Justices dispensed with.

8. Any Judge or Queen's Counsel presiding at any sittings of the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, or of any of such Courts, shall while so presiding possess, exercise and enjoy all the powers and authorities which are now or were formerly granted in commissions issued for holding all or any of the said Courts, or which a Judge of either of the Superior Courts of Law would have, if presiding thereat; and may in civil proceedings reserve the giving of his final decision on questions raised at the trial; and his decision whenever given shall be considered as if given at the time of the trial. C. S. U. C. c. 11, s. 4; 37 V. c. 7, s. 24.

Powers of the presiding Judge at any Assize. Reservation of decision.

9. Any person acting as a Judge of Assize and Nisi Prius may, in and for the County for which he is acting, and while

Any one sitting as Judge of Assize may



during sittings act as Judge in Chambers.

the sittings of the said Court last, act as a Judge in Chambers in all matters entered for trial before him, as if he were a Judge of one of the Superior Courts of Law. 33 V. c. 11, s. 2; *See also Rev. Stat. c. 39, s. 28.*

Anyone whilst acting as Judge of Assize in Toronto, may act as Judge in Chambers.

**10.** Any person acting as a Judge of Assize and Nisi Prius in the City of Toronto, may, while so sitting or acting as such Judge, or while the sittings last, act as a Judge in Chambers in all matters, as if he were a Judge of one of the Superior Courts of Law. 33 V. c. 11, s. 1; *See also Rev. Stat. c. 39, s. 27.*

Course to be pursued by the Sheriff if the Judge of Assize does not arrive on the day appointed for opening Courts of Assize and Nisi Prius, and Oyer and Terminer, etc.

**11.** Wherever the Judge whose duty it is to hold any Court of Assize and Nisi Prius, or of Oyer and Terminer or General Gaol Delivery, does not arrive in time, or is not able to open such Court on the day appointed for that purpose, the Sheriff of the County in which such Court should be holden, or, in his absence, his Deputy, may, after the hour of six of the clock in the afternoon of such day, adjourn by his proclamation, the Court which should have been opened on that day, to an hour on the following day to be by him named, and so from day to day until the Judge arrives to open such Court, or until such Sheriff receives other direction from the Judge in that behalf. C. S. U. C. c. 11, s. 7; 39 V. c. 7, s. 2, *Sched. B.*; 40 V. c. 7, *Sched. A* (53) & (54).

Assizes may be held during term.

**12.** The Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery for any County, shall not be put an end to by the commencement of a Term of the Superior Courts of Common Law, but may continue and be holden during Term. 37 V. c. 7, s. 25, *first part*; *See C. S. U. C. c. 11, s. 8.*

#### CLERKS OF ASSIZE.

Who to officiate as Clerks of Assize.

**13.** The Deputy Clerks of the Crown in the several Counties and Unions of Counties in Ontario, except the County in which the City of Toronto is situated, shall *ex officio* be and act as Marshals and Clerks of Assize at the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, to be holden in their respective Counties or Unions of Counties, and shall have all the powers and perform all the functions incident to the same as such Marshals and Clerks of Assize. C. S. U. C. c. 11, s. 9.

To make return of proceedings and transmit indictments, &c., to the Clerk of the Crown, and Pleas, Queen's Bench.

**14.** The said Deputy Clerks of the Crown respectively shall, immediately after each sitting of such Courts, forward by post to the Clerk of the Crown and Pleas of the Court of Queen's Bench at Toronto, every recognizance, indictment, paper or proceeding in any criminal matter, in their custody as such officers respectively, and also the usual and proper returns as such Marshals and Clerks of Assize. C. S. U. C. c. 11, s. 10.

**15.** The Deputy Clerks of the Crown shall pay the postage on the transmission to Toronto of the indictments and other proceedings in criminal cases, and shall be entitled to be repaid such postage out of the Consolidated Revenue Fund. C. S. U. C. c. 11 s. 11. And to pay the postage thereon, &c.

**16.** The Lieutenant-Governor in Council may from time to time appoint a suitable person to be the Marshal and Clerk of Assize for the County of York, who shall hold office during pleasure, 39 V. c. 7, s. 4. Marshal and Clerk of Assize for County of York.

**2.** The person so appointed shall perform the duties of Marshal and Clerk of Assize at the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery for the County of York, and shall be subject to all the provisions of this Act, in reference to records, exhibits and other documents; and he shall also perform such other duties as he may from time to time be directed, by rules of the Judges of the Courts of Queen's Bench and Common Pleas, to perform; and subject to such duties and rules he shall be a Clerk in the office of the Clerk of the Crown and Pleas of the Queen's Bench. 39 V. c. 7, s. 4 (2). Duties.

**3.** The person so appointed shall take and receive the same fees only, as other Marshals and Clerks of Assize; and such fees shall be by him accounted for, paid over and applied in the manner provided by law; and he shall not take for his own use or benefit, directly or indirectly, any fee or emolument save the salary to which he may be entitled by law. 39 V. c. 7, s. 4 (3). Fees.

**4.** When the Court of Assize and Nisi Prius in the County of York is held separate and apart from the Courts of Oyer and Terminer and General Gaol Delivery in the said County, and at the same time, the Clerks of the Crown and Pleas of the Superior Courts of Law shall alternately (commencing with the senior in office of such Clerks) personally or by Deputy act as Clerks of the Courts of Oyer and Terminer and General Gaol Delivery, only as long as the two Courts sit separately at the same time, and shall while so acting have all the powers and exercise all the functions that are by law had and exercised by Marshals and Clerks of Assize. 39 V. c. 7, s. 4. *See* C. S. U. C. c. 11, s. 19. Clerk of Courts of Oyer and Terminer and General Gaol Delivery when held in County of York at same time as Courts of Assize.

**17.** In the event of any Marshal or Clerk of Assize being absent, or being prevented by illness or other cause from performing his duties as such Marshal or Clerk, the presiding Judge of Assize may authorize some person to act as Marshal or Clerk of Assize, and the person so authorized to act shall receive the remuneration payable for the performance of the duties. C. S. U. C. c. 11, s. 12. Absence of Clerk of Assize provided for.

**18.** Every Marshal and Clerk of Assize, being a Deputy Clerk of the Crown or authorized to act as such under the Remuneration of Deputy Clerks of the

Crown when  
they act as  
Clerks of  
Assize.

seventeenth section, shall be entitled to be paid out of the Consolidated Revenue Fund the sum of four dollars for each day's attendance as such Marshal or Clerk of Assize, and postage as hereinbefore provided. C. S. U. C. c. 11, s. 21.

Not to receive  
fees on the  
criminal side.

**19.** No charge whatever shall be made by any of the said Marshals or Clerks of Assize upon any criminal trial or proceeding in any Court at which they act as such Marshals and Clerks of Assize respectively. C. S. U. C. c. 11, s. 22.

## CHAPTER 42.

### An Act respecting County Judges and the Local Courts.

Short Title, s. 1.

County Judges and Junior Judges,  
ss. 2-5.

Deputy Judges, ss. 6-8.

Oath of Office, s. 9.

Duties and Powers generally, ss.  
10-15.

County Court Districts, ss. 16-22.

Shorthand Writers, s. 23.

Local Courts of County of York,  
ss. 24-26.

Concurrent sittings for jury and  
non-jury cases, s. 24.

Shorthand Writers, s. 25.

Payment of money into Court, s.

**H**ER MAJESTY by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

**1.** This Act may be cited as "*The Local Courts Act.*"

#### JUDGES AND JUNIOR JUDGES.

Tenure of  
office by  
County Court  
Judges.

**2.** The Judges of the several County Courts holding office when this Act takes effect, as well as the Judges hereafter to be appointed, shall hold their offices during good behaviour, but shall be subject to be removed by the Lieutenant-Governor for inability, incapacity or misbehaviour, established to the satisfaction of the Lieutenant-Governor in Council. 33 V. c. 12, s. 1.

Removal.

The Senior  
Judge to be  
styled "The  
Judge," &c.

**3.** In case more than one County Court Judge is appointed for any County, then, unless otherwise expressed in the commission, the Judge whose commission has priority of date shall be styled "The Judge of the County Court of "

(as the case may be), and the other Judge of the same Court shall be styled "The Junior Judge" thereof. C. S. U. C. c. 15, s. 4.

2. No Junior Judge shall be appointed in or for any County or Union of Counties, unless the population of the County or Union of Counties exceeds forty thousand, as appears by the official census then last taken. . 35 V. c. 9, s. 1.

Appointment  
of Junior  
Judges.

4. Every County Court Judge shall reside within the County or Union of Counties of which his commission designates him as Judge; and there shall continue to be a resident Judge in each County or Union of Counties, now having a County Judge. C. S. U. C. c. 15, s. 5; 39 V. c. 14, s. 7.

To reside  
within the  
County.

5. No such Judge shall, during the continuance of his appointment, directly or indirectly, practise in the profession of the law as Counsel, Attorney or Solicitor, or as a Notary Public, or Conveyancer, or do any manner of conveyancing, or prepare any papers or documents to be used in any Court of this Province, under the penalty of forfeiture of office and the further penalty of four hundred dollars to be recovered by any person who sues for the same by action or debt or information in either of the Superior Courts of Common Law; and one-half of such pecuniary penalty shall belong to the party suing, and the other half to Her Majesty. C. S. U. C. c. 15, s. 5; 29 V. c. 30, s. 1.

Not to  
practise.

Penalty.

#### DEPUTY JUDGES.

6. A Barrister of at least three years' standing at the Bar of Ontario, may be appointed to be Deputy Judge for any County. C. S. U. C. c. 15, s. 8, *first part*; 40 V. c. 7, *Sched. A. (55)*.

A Deputy  
Judge may be  
appointed.

2. Such appointment may be made notwithstanding that the office of Judge is vacant by death, or resignation, or that the Judge is ill or absent at the time of the appointment of such Deputy Judge. 39 V. c. 14, s. 12; 40 V. c. 7, *Sched. A. (56)*.

7. Every Deputy Judge shall hold office during pleasure, and in case of the death, illness, or absence of the Judge, shall have authority to perform in the place of such Judge, in the County for which he is Deputy, all the duties of and incident to the office of Judge of the County Court and Division Courts, and all acts required or allowed to be done by the Judge of the County Court under this or any other statute. C. S. U. C. c. 15, s. 8; 39 V. c. 14, s. 11; 40 V. c. 7, *Sched. A. (57)*.

Tenure of  
office and  
powers.

8. No Deputy Judge shall be disabled from practising the profession of the law while holding his appointment. C. S. U. C. c. 15, s. 8, *last part*.

Not to be dis-  
abled from  
practising.



## OATH OF JUDGES.

Oath of office. **9.** No County Court Judge, or Deputy Judge, shall enter upon the duties of his office until he has taken the following oath before some person appointed by the Lieutenant-Governor to administer the same, that is to say :

Form of. "I, \_\_\_\_\_, do swear that I will (*in the case of a Deputy Judge add the words 'as occasion may require'*) truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of Judge of the County Court of the County of \_\_\_\_\_ (*or United Counties of \_\_\_\_\_, as the case may be*), and of the several Division Courts within the same, without fear, favour or malice : So help me God."

C. S. U. C. c. 15, s. 9.

## DUTIES AND POWERS OF JUDGES.

County Court Judges to be *ex officio* Justices of the Peace. **10.** Every County Court Judge, not including a Deputy Judge, shall be *ex-officio* a Justice of the Peace for every County and part of Ontario, and may act in the office of Justice of the Peace in any part of the Province; and no property or other qualification shall be required in the case of a County Court Judge. 39 V. c. 14, s. 13; 40 V. c. 7, *Sched. A.* (58).

Powers of Junior Judge. **11.** Where any power or authority is, by this Act or by any statute now in force or which may hereafter be passed, conferred upon or is otherwise exercisable by the Senior Judge of a County Court, whether with reference to the holding of any of the Courts of the County which the said Judge may hold, or to the business of any of the said Courts, or to any other matter or thing over which the said Judge has jurisdiction, either by virtue of any statute or otherwise howsoever, the like power and authority shall be possessed by, and may be executed by the Junior Judge, subject, however, to the general regulation and supervision of the Senior Judge. *See* 32 V. c. 22, s. 4; 35 V. c. 9, s. 2; 36 V. c. 8, s. 47; 37 V. c. 7, s. 58; 40 V. c. 7, *Sched. A.* (59).

Either or both Judges to preside in any of the Courts of the County or one in each Court simultaneously. **12.** At any Sittings of the County Court at the same time as the Sittings of the Court of General Sessions of the Peace, or of a Division Court in any County, or of any two of the said Courts at the same time, either the Senior or Junior Judge or both of them, may, if the Senior Judge thinks fit, preside in any of the said Courts, or each of them in one of said Courts at the same time, so that two of the said Courts may sit and the business therein be proceeded with simultaneously. 32 V. c. 22, s. 5.

Duty of Judge to act without his County. **13.** It shall be the duty of a County Court Judge to hold any of the Courts in any County other than his own, or to perform any other duty of a County Court Judge in any County, upon being required so to do by an order of the

Governor-General made at the request of the Lieutenant-Governor; or, without any such order, the Judge in any County may, if he sees fit, perform any judicial duties in any County other than his own on being requested to do so by the Judge to whom the duty for any reason belongs. 39 V. c. 14, s. 9. See 35 V. c. 9, s. 3; 37 V. c. 7, ss. 54 & 55; 38 V. c. 12, ss. 5 & 6; 39 V. c. 1, s. 2.

**14.** Any retired County Court Judge may hold any Court or perform any other duty of a County Court Judge, in any County, on being requested to do so by the Judge to whom the duty for any reason belongs, or upon being authorized so to do by an order of the Governor General, made at the request of the Lieutenant-Governor. 40 V. c. 8, s. 13, *part*.

Retired County Judges may act for County Judges in certain cases.

**15.** In the cases mentioned in the two next preceding sections, the Judge, acting in compliance with such direction or request, shall have jurisdiction to hold all or any of the Courts of the County in which he so acts, and to do or adjudicate upon all matters or things either in Term or Vacation in such County, and whether relating to the business of any of the said Courts or to any other matter or thing over which the Judge of the County Court of the County has jurisdiction, either by virtue of any statute or otherwise howsoever; and no act of such Judge in any County shall be open to question in any legal proceeding on the alleged ground that he was not the proper Judge to perform the duty, or that the same had not been regularly or otherwise assigned to him, or had not been performed at such request, or by such direction, as the law requires. 39 V. c. 14, s. 10. See 35 V. c. 9, s. 3; 37 V. c. 7, s. 54; 38 V. c. 12, s. 5.

Power of a Judge acting without his County.

#### COUNTY COURT DISTRICTS.

**16.** Any part or parts of the Province may, for the purposes of this Act, be divided into Districts, or groups of Counties, by proclamation of the Lieutenant-Governor, at such time or times as he may deem expedient; and such division shall take effect, and the Districts thereby formed be erected and established, on such day after the first publication of the proclamation in the *Ontario Gazette* as the proclamation may name;

Division into Districts.

2. The Districts so erected may, from time to time, be dissolved, re-established, altered or re-arranged by the Lieutenant-Governor by like proclamation; and the time when such dissolution, alteration or re-arrangement is to take effect may be named, proclaimed and published in the *Ontario Gazette* in like manner. 39 V. c. 14, s. 1.

**17.** After the erection of a District for the purposes of this Act, the several County Courts, Courts of General Sessions, Division Courts, Courts of Appeal under "*The Assessment Act*,"

What Judges shall hold the Courts.  
Rev. Stat. c. 180.

Courts for the Revision of Voters' Lists and all other Courts which a County Judge may hold in each County, shall be held by the Judges (including therein the Junior Judges) in the District, in rotation, as far as may in each District be just, convenient and practicable, in view of the respective ages, length of service, and strength of the several Judges and the special duties assigned to Junior Judges, as well as in view of the other offices (if any) held by any of the Judges, and all other circumstances. 39 V. c. 14, s. 2.

Annual meeting of Judges to arrange as to business.

**18.** The Judges in any or each District so erected shall meet together at least once in every year; and the Judges present, or a majority of them, shall arrange and appoint which of the said Courts in the District shall be held by each of the Judges of the District throughout the ensuing year, and what other judicial work each shall discharge in the respective Counties of the District throughout the year.

Judges of a County Court District may regulate sittings in June and December.

**2.** Such Judges may also (subject to the approval of the Lieutenant-Governor in Council, to be notified in the *Ontario Gazette*) fix and appoint the times in the months of June and December respectively in each year, for the holding of the County Courts and General Sessions of the Peace in each County of such District, and such Courts shall be held on the days so appointed. 39 V. c. 14, s. 3; 40 V. c. 8, s. 11.

First meetings, when and where to be held.

**19.** The first meeting shall take place at such place and time as may be named for that purpose in the proclamation erecting and establishing a District of Counties, or at any place and on any day the Judges of the District may agree upon in case the same are not named in the proclamation; and the meeting may be continued from day to day at the discretion of the Judges present.

Subsequent meetings

**2.** The subsequent annual meetings shall be at such one of the County Towns of the District, and at such place there, and at such time, as the Judges of the District may unanimously agree upon, or as a majority present at any annual meeting may appoint, or as the Lieutenant-Governor may by Order in Council direct. 39 V. c. 14, s. 4.

Duty of the Judges.

**20.** It shall be the duty of every Judge to whom any duty is assigned at any such meeting, to perform the duty so assigned to him; and if he is, by reason of illness or any other cause, unable to perform the same, it shall be his duty to do what is necessary, if he can, to have the duty performed by another person competent by law in that behalf. 39 V. c. 14, s. 5.

Want of provision made at a meeting for performance of duties.

**21.** In case no provision is made at any such meeting for some duty belonging to the County Court Judges, or in case the provision made in that behalf proves abortive, it shall be the duty of the Judges of the District to see that the deficiency

is supplied by some other person competent by law in that behalf, and to forthwith communicate what they do therein to the Provincial Secretary. 39 V. c. 14, s. 6.

**22.** The Judge of any County, forming part of a District, may, if he sees occasion, perform in any part of the District any judicial acts affecting the Courts or business of the County of which his commission designates him as Judge, and being within the legislative authority of this Province. 39 V. c. 14, s. 8.

Powers of Judge of a County forming part of a District.

### *Shorthand Writers.*

**23.** In case the Municipal Council of any County, or the Municipal Councils of any County and a City or Town united with the County for judicial purposes and not within the jurisdiction of the County Council, pass a resolution or resolutions, as the case may be, requesting or approving of the appointment of a shorthand writer to and for the local Courts of the County, the Lieutenant-Governor may from time to time appoint a person to fill the office of shorthand writer for the said Courts, and such person shall be subject to the direction of the Senior Judge, or, in his absence, to the direction of the Junior Judge, and shall be entitled to such remuneration, either by salary or by fees, or partly by salary and partly by fees, as the Lieutenant-Governor in Council may from time to time direct; and if paid by salary only, the fees payable in respect of his duties as a shorthand writer, shall go in reduction of his salary, and the balance, if any, shall be paid by the County quarterly, on the first day of January, April, July and October of every year.

Shorthand writers.

Salary.

2. Such fees, and all matters relating to the duties of the said officer, shall be determined and regulated from time to time by the Judges of the said County Court, subject to the approval of the Lieutenant-Governor in Council.

Fees and Duties.

3. The City or Town aforesaid, shall bear and recompense the County for a proper proportion of the said salary, and such proportion, in case the City or Town and County disagree, shall be determined by arbitration, according to the provisions of "*The Municipal Act*;" and, subject to such agreement or arbitration, and until and unless the same determines a different proportion, the City or Town shall pay to the County one-half, and the County's share shall be one-half of said salary.

Share of City or Town in salary.

Rev. Stat. c. 174.

4. This section shall not apply to the County of York. 40 V. c. 8, s. 12.

### LOCAL COURTS OF COUNTY OF YORK.

**24.** The Lieutenant-Governor may from time to time appoint a person to fill the office of shorthand writer for the local Courts of the County of York, and such person shall be subject

Shorthand writers.



Salary.

to the direction of the Senior Judge, or, in his absence, to the direction of the Junior Judge, and shall be entitled to such remuneration, either by salary or by fees, or partly by salary and partly by fees, as the Lieutenant-Governor in Council may from time to time direct; and if paid by salary only, the fees payable in respect of his duties as a shorthand writer, shall go in reduction of his salary, and the balance, if any, shall be paid by the County quarterly, on the first day of January, April, July and October of every year.

Fees and duties.

2. Such fees, and all matters relating to the duties of said officer shall be determined and regulated from time to time by the Judges of the said County Court, subject to the approval of the Lieutenant-Governor in Council. 40 V. c. 19, s. 4 (1).

Share of City of Toronto in salary.

3. The City of Toronto shall bear and recompense the County of York for a proper proportion of the said salary, and such proportion, in case the City and Council disagree, shall be determined by arbitration, according to the provisions of "*The Municipal Act*;" and, subject to such agreement or arbitration and until and unless the same determines a different proportion, the City shall pay to the County one-half, and the County's share shall be one-half of said salary. 40 V. c. 19, s. 4 (2).

Rev. Stat. c. 174.

### *Payment of Money into Court.*

Payment of money into Court.

**25.** Money to be paid into the County Court, or Surrogate Court of the County of York by any person, shall be paid into some incorporated bank designated for this purpose, from time to time, by order of the Lieutenant-Governor in Council; or where there is no such bank, then into some incorporated bank in which public money of the Province is then being deposited, and which has been appointed for this purpose by any General Rule or Order made in the same manner as other General Rules or Orders of the said Courts respectively are by law directed to be made; or if no bank has been so appointed, then into any bank in which public money of the Province is then being deposited.

Procedure.

2. The money shall be so paid in to the credit of the cause or matter in which the payment is made, with the privity of the Clerk or Registrar (as the case may be) of the Court, and in no other manner; and such money shall only be withdrawn on the order of the Court or a Judge thereof, with the privity of the Clerk or Registrar of the Court.

Withdrawal

Plea of payment into Court.

3. Where money is so paid in under a plea of payment into Court, the Clerk, on the production of the receipt of the bank for the money or other satisfactory proof of such payment, shall sign a receipt for the amount in the margin of the plea;

4. The Clerk and Registrar of said Courts shall each keep a book or books containing an account of all moneys so paid into their respective Courts, and of the withdrawal thereof; and shall prepare in the month of January in every year a statement of all moneys so paid in and withdrawn respectively, and a statement of the condition of the various accounts upon the thirty-first day of the preceding December, and shall transmit to the Provincial Secretary and to the Judge or each of the Judges of such Courts, a copy of such statement, with a declaration thereto annexed made before a Justice of the Peace or Commissioner for taking affidavits, in the form following :

Clerk or Registrar to keep books and render statements.

I hereby solemnly declare that the annexed statement is a full and true statement of the moneys paid into the County (or Surrogate) Court of the County of York, during the year 18 , and that it correctly shows the state of the various accounts therein mentioned upon the thirty-first day of December last.

Verification of statement by Clerk or Registrar.

(Signature) A. B.,  
Clerk, or Registrar.

Subscribed and declared before me, at , this  
day of January, 18 .

C. D.,  
Commissioner for taking affidavits, or  
Justice of the Peace.

5. The book or books so to be kept shall be open for inspection within office hours ; and the Clerk or Registrar shall give a certificate of the state of any account or an extract therefrom at the desire of any party interested, or his attorney or solicitor on payment to the Clerk or Registrar of the sum of twenty cents for such inspection or certificate and the sum of ten cents per folio for such extract. 39 V, c. 7, s. 7.

Books to be open for inspection.

Fees for extracts, &c.

## CHAPTER 43.

## An Act respecting the County Courts.

Short Title, s. 1.  
 Style of the Courts, s. 2.  
 Judges, s. 3.  
 Clerks, ss. 4-9.  
 Terms, ss. 10-12.  
 Sittings, ss. 13-17.  
 Jurisdiction, ss. 18-23.

Removal of cases by certiorari, ss.  
 24-26.  
 Pleading and Practice, ss. 27-30.  
 Execution, ss. 31, 32.  
 Power to enforce Rules, s. 33.  
 Appeals, ss. 34-42.  
 Writs of Error, ss. 43, 44.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

**1.** This Act may be cited as "*The County Courts Act.*"

Existing  
 Courts con-  
 tinued.

**2.** There shall be in every County or Union of Counties a Court of Law and of Record, to be styled the County Court of the County of (or United Counties of as the case may be); and the County Courts already established under such names respectively, and all existing commissions, Judges and officers of such County Courts shall continue subject to the provisions of this Act. C. S. U. C. c. 15, s. 1.

## JUDGES.

Judges.

**3.** The County Court in each County shall be presided over by the Judge or Junior or acting Judge or Deputy Judge as provided by "*The Local Courts Act.*"

Rev. Stat.  
 c. 42.

## CLERKS.

The Lieuten-  
 ant-Governor  
 to appoint  
 Clerks.

**4.** The Lieutenant-Governor shall from time to time appoint, under the Great Seal, a Clerk to every County Court, to hold office during pleasure. C. S. U. C. c. 15, s. 24.

Clerks to give  
 security.

**5.** Every Clerk of a County Court shall give security for the due performance of his office, in such sum and with so many sureties, and in such manner and form as the Lieutenant-Governor directs. C. S. U. C. c. 20, s. 2.

Where his  
 office is to be  
 held.

**6.** The Clerk of every County Court shall keep his office in the Court House, or if there be no room therein, then in

such place within the County Town as the Judge directs. C. S. U. C. c. 15, s. 25.

7. Every such Clerk shall keep his office open for the Office hours. transaction of business on every day, holidays excepted, from the hour of ten in the forenoon to the hour of three in the afternoon, and in Term time from nine in the forenoon to four in the afternoon. C. S. U. C. c. 15, s. 26; 39 V. c. 7, s. 13.

8. The Clerk of every County Court shall, from time to time, Clerk to render as often as required so to do by the County Crown Attorney of accounts to his County, and at least once in every three months, deliver to County Crown Attorney. him, verified by the affidavit of such Clerk sworn before the Judge or a Justice of the Peace of the County, a full account in writing of all fines levied by the Court. C. S. U. C. c. 15, s. 28.

9. The Clerks of the County Courts shall tax costs, sub- To tax costs. ject, in the event of any dispute arising at taxation, to an appeal to the Judges of the said County Courts respectively. C. S. U. C. c. 15, s. 31.

#### TERMS.

10. The several County Courts shall, in each year, hold four County Court Terms, which (except in the County of York) shall commence Terms, time of. respectively on the first Monday in the months of January, April, July and October in each year, and end on the Saturday of the same week. 34 V. c. 12, s. 15.

2. The Terms of the County Court of the County of York County of shall commence on the first Monday in January and April and York. on the second Monday in June and October, in each year, and shall end on the Saturday of the same week. 40 V. c. 19, s. 3.

11. It shall not be necessary for the Sheriff or his officers Sheriff not to attend the sittings of the County Court in Term. 34 V. c. attend. 12, s. 15.

12. The Judges of the several County Courts may, during Judgments each Term, appoint one or more days within the fortnight next may be pronounced in vacation. following the last day of such Term, on which judgments will be given; and, on the day appointed, the said Judges may sit as of Term, for the purpose only of giving judgments and of making rules and orders in matters previously moved and argued in their respective Courts during the Term; and all judgments, rules and orders pronounced and made on such days shall have the same effect as if pronounced or made in Term time. C. S. U. C. c. 15, s. 14.



## SITTINGS.

County Court  
sittings.

Rev. Stat. c.  
42, s. 18.

**13.** Except in the County of York, and subject to the provisions of section eighteen of "*The Local Courts Act*," the Sittings of the said County Courts, for the trial of issues of fact and assessment of damages, shall be held semi-annually, to commence on the second Tuesday in the months of June and December in each year. 34 V. c. 12, s. 16.

County of  
York.

**2.** The County Court of the County of York shall hold four such Sittings in each year, to commence respectively on the first Tuesday in the months of December and March, and on the second Tuesday in the months of May and September in each year. 34 V. c. 12, s. 16; 36 V. c. 8, s. 59; 40 V. 19, s. 1.

County Court  
sittings with-  
out a jury in  
April and  
October.

**14.** Except in the County of York, there shall be Sittings of the several Courts of this Province on the first Monday in the months of April and October in each year, whereat all issues of fact in any civil action brought or pending in the Court wherein the Sittings may be, and every assessment and enquiry of damages in any such action may be heard, tried and assessed by the Judge of such Court without the intervention of a jury, in those cases where no jury is required; and on any such finding, assessment or enquiry, the *postea* shall be to meet the facts. 33 V. c. 7, s. 7. See 35 V. c. 10, s. 3.

Power to hold  
additional  
County Court  
sittings.

**15.** In addition to the regular Sittings of the several County Courts, the Judge of each County Court may, at such times as he appoints for the purpose, hold additional Sittings of such Courts for the trial of issues of fact to be tried in such Court by a Judge without a jury; and he shall hold such Sittings as often as may be requisite for the due despatch of business. 37 V. c. 7, s. 57.

Concurrent  
sittings for  
trial of jury  
and non-jury  
cases.

**16.** While Sittings of the County Court of any County which has a Senior and Junior Judge, are being held for the trial of issues of fact and assessment of damages, the Judges of the said Court, or any two persons authorized to hold the Sittings of such Court, may, in case the General Sessions of the Peace have been adjourned or have terminated, sit separately, one for the trial of causes where a jury is required, and the other for the trial of causes to be tried without a jury. 40 V. c. 8, s. 10; 40 V. c. 19, s. 2.

Adjourning  
County Courts  
owing to  
illness of  
Judge, etc.

**17.** Wherever, from illness or from other casualty, the Judge who is to hold the Sittings of the County Court is unable to hold the same at the time appointed therefor, the Sheriff of the County, or in his absence his Deputy, may adjourn by his proclamation the said Court to any hour on the following day, to be by him named, and so from day to day until the Judge is able to hold such Court, or until he receives other directions from the Judge or Provincial Secretary.

2. The Sheriff shall forthwith notify any adjournment to the Provincial Secretary, for the information of the Lieutenant-Governor. 37 V. c. 7, s. 59. Provincial Secretary to be notified.

## JURISDICTION.

18. Except in the cases of ejectment mentioned in the twentieth section of this Act, or in other cases in which, by any other Act, jurisdiction is conferred upon County Courts or a Judge thereof, the said Courts shall not have cognizance of any action : Jurisdiction restricted.

1. In which the title to land is brought in question ; or,

2. In which the validity of any devise, bequest or limitation under any will or settlement is disputed ; or

3. For any libel or slander ; or,

4. For criminal conversation or seduction ; or

5. Against a Justice of the Peace for anything done by him in the execution of his office, if he objects thereto. C. S. U. C. c. 15, s. 16.

19. Subject to the exceptions contained in the last preceding section, the County Courts shall have jurisdiction and hold plea : Jurisdiction allowed.

1. In all personal actions where the debt or damages claimed do not exceed the sum of two hundred dollars ;

2. In all causes and suits relating to debt, covenant and contract, to four hundred dollars, where the amount is liquidated or ascertained by the act of the parties or by the signature of the defendant ;

3. To any amount on bail-bonds given to a Sheriff in any case in a County Court, whatever may be the penalty ; and

4. On recognizances of bail taken in a County Court, whatever may be the amount recovered or for which the bail therein may be liable. C. S. U. C. c. 15, s. 17.

5. In actions of replevin where the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of two hundred dollars, as provided in "The Replevin Act." See C. S. U. C. c. 29, s. 3. Rev. Stat. c. 53.

6. In interpleader matters, as provided by "The Interpleader Act." See 27 V. c. 14, s. 3. Rev. Stat. c. 54.

*Ejectment.*

Jurisdiction  
in certain  
cases of eject-  
ment.

**20.** The several County Courts shall have jurisdiction in actions of ejectment for the recovery of corporeal hereditaments (where the yearly value of the premises, or the rent payable in respect thereof, does not exceed two hundred dollars) in the following cases, namely :

1. Where the term and interest of the tenant of any such corporeal hereditament has expired, or has been determined by the landlord or the tenant, by a legal notice to quit ;

2. Where the rent of any such corporeal hereditament is sixty days in arrear, and the landlord has the right by law to re-enter for non-payment thereof ;

Power in such  
cases.

and in respect to such actions the said Courts shall have and exercise the same powers as belong to and may be exercised by the Superior Courts of Common Law, in and in respect to actions of ejectment. 23 V. c. 43, ss. 1 & 4.

In what Coun-  
ty such ac-  
tions to be  
brought.

**21.** Every such action shall be brought in the County Court of the County in which the premises sought to be recovered lie. 23 V. c. 43, s. 7.

" Landlord "  
defined.

**22.** The term " Landlord," as used in section twenty of this Act, shall be understood to mean the person entitled to the immediate reversion of the lands ; or if the property be holden in joint tenancy, coparcenary or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion. 23 V. c. 43, s. 6.

Rev. Stat.  
c. 51, to apply.

**23.** The provisions of "*The Ejectment Act*" shall, so far as applicable, extend and apply to actions and proceedings under this Act, and to the said County Courts, in reference to such actions and proceedings ; but the Judges of the Superior Courts of Common Law, acting under the forty-fifth and following sections of "*The Administration of Justice Act*," may alter the mode of procedure prescribed by the said first mentioned Act so far as relates to actions of ejectment in the County Courts under this Act. 23 V. c. 43, ss. 3 & 5.

Judges may  
alter mode of  
proceeding.

Rev. Stat. c.  
49, s. 45 *et seq.*

## REMOVAL OF ACTIONS BY CERTIORARI.

Where County  
Court jurisdic-  
tion ousted,  
the case may  
be removed by  
*certiorari*.

**24.** Wherever it appears in any action otherwise of the proper competency of the County Court that such Court has not cognizance thereof from the title to land being brought in question, or from the validity of any devise, bequest, or limitation under any will or settlement being disputed, any Judge of either of the Superior Courts of Common Law or the Judge of the County Court before whom such cause is pending, may order a writ of *certiorari* to issue out of one of the Superior

Courts of Common Law to remove such cause into such Superior Court; and the cause when removed into the Superior Court shall be proceeded with in the said Court in the manner pointed out in section twenty-six of this Act.

2. The Judge making such order may in his discretion make and impose such terms on the party applying for such *certiorari*, as to payment of costs, giving security for debt or costs, Imposition of terms on granting *certiorari*. or such other terms as he thinks fit.

3. Where such writ is issued on the order of a Judge of a County Court, a Judge of either of the Superior Courts of Common Law, sitting in Chambers at Toronto, may rescind such order, or vary the terms thereof or imposed thereby. Superior Court Judge may review order for *certiorari* of Co. Court Judge. 33 V. c. 7, s. 10.

25. Except in cases within the meaning of the preceding section, no cause or suit instituted in any County Court shall be removed or removable from such County Court, by writ of *certiorari*, or otherwise, into either of the Superior Courts of Common Law, unless the debt or damages claimed amount to upwards of one hundred dollars, and then only on affidavit and by leave of a Judge of one of the said Superior Courts, in cases which appear to the Judge fit to be tried in one of the Superior Courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he thinks fit. 23 V. c. 44, s. 1. In what cases and on what conditions causes shall be removable.

26. In any case removed from the County Court to either of the Superior Courts of Common Law by a writ of *certiorari*, it shall not be necessary to declare *de novo*, but the case shall proceed on the record as it stands when removed into the Superior Court, and all subsequent proceedings may be had and taken in the cause in the same way as if it had been originally commenced and prosecuted in such Superior Court. 33 V. c. 7, s. 9. On removal by *certiorari*, proceedings to stand, and not to be begun *de novo*.

#### PLEADING AND PRACTICE.

27. Any suit or action by or against a Judge or Junior Judge of a County Court which is within the competence of a County Court, may be brought in the County Court of any County adjoining that in which such Judge or Junior Judge resides. 40 V. c. 8, s. 14. Where suits against Judges of County Courts to be brought.

28. No plea, replication or other pleading, whereby the title to any land, or to any annual or other rent, duty or other custom or thing, relating to or issuing out of lands or tenements, is brought in question, shall be received by any County Court without an affidavit thereto annexed that the same is not pleaded vexatiously, nor for the mere purpose of excluding the Court from jurisdiction, but that the same contains matter Pleas to the jurisdiction must be verified.



which the deponent believes to be necessary for the party pleading to enable him to go into the merits of his case. C. S. U. C. c. 15, s. 20.

General rule  
as to practice.

**29.** In any case not expressly provided for by law, the practice and proceedings in the several County Courts shall be regulated by and shall conform to the practice of the Superior Courts of Common Law, and the practice for the time being, of the said Superior Courts, shall, in matters not expressly provided for, apply and extend to the County Courts and to all actions and proceedings therein. C. S. U. C. c. 15, s. 18 ; C. S. U. C. c. 22, s. 341.

Powers as to  
new trials, &c.

**30.** The several County Courts may, in Term time, by rule or order, set aside verdicts or non-suits, and grant new trials, and make orders for judgment *non obstante veredicto*, or for arresting judgment, and such Courts in Term time, and the Judges thereof in Vacation, may by rule or order set aside judgments by default, set aside proceedings for irregularity, grant time for any pleading, and order stay of proceedings till security is given for costs, and may issue summonses and make orders in all matters of practice in like manner and on the like principles and grounds, and to the same extent as in the Superior Courts, or by the Judges thereof in their Courts, and may cause rules on Sheriffs, or any other rules, orders or proceedings thereupon to be served in any County. C. S. U. C. c. 15, s. 19.

#### EXECUTION.

Writs of execution.

**31.** The County Courts may issue writs of *fieri facias* against goods and against lands, and writs of *capias ad satisfaciendum* against the person, in like cases, upon the same terms, and in the same order, as similar writs may be issued in the Superior Courts of Common Law. C. S. U. C. c. 15, s. 21.

Writs of execution may  
run into other  
Counties.

**32.** The County Courts may issue writs of execution against the person, lands or goods, writs of subpoena, rules on the Sheriff, and all other rules, orders and proceedings into any other County, to be served or executed therein ; and Judge's summonses and orders may be issued in like manner ; and all such writs, rules, summonses, orders and proceedings shall be of equal force and effect, and as binding as if the same had issued from the Court or by the Judge of the County to or into which they are so issued, and all subsequent proceedings thereupon shall be carried on in the Court in which the action has been brought or the judgment entered. C. S. U. C. c. 15, s. 22.

#### POWER TO ENFORCE RULES.

Power to enforce  
rules, &c.

**33.** The several County Courts shall have and exercise the same powers to enforce their rules, regulations and directions as the Superior Courts of Common Law possess, and may punish

by fine or imprisonment, or by both, for any wilful contempt or resistance to their regular process, rules or orders; but such fine shall in no case exceed one hundred dollars, nor shall such imprisonment exceed six months. C. S. U. C. c. 15, s. 23.

#### APPEALS FROM COUNTY COURTS.

**34.** The terms "party to a cause," and "appellant," herein-  
after used, shall include persons suing or being sued in the  
name of others, though not mentioned in the record, and per-  
sons on whose behalf or for whose benefit any suit is prosecuted  
or defended, as well as parties named in the record. 33 V. c.  
7, s. 13; see 27 V. c. 14, s. 1.

Interpreta-  
tion.

**35.** In case any party to a cause in any County Court is dis-  
satisfied with the decision of the Judge upon points reserved,  
or upon any points of law arising upon the pleadings, or re-  
specting the reception or rejection of evidence; or with the  
Judge's charge to the jury; or with the decision upon any  
motion for a non-suit, or for a new trial, or in arrest of judg-  
ment, or for judgment *non obstante veredicto*, he may appeal  
to the Court of Appeal. C. S. U. C. c. 15, s. 67; 27 V. c.  
14, s. 2; 33 V. c. 7, s. 13; 39 V. c. 7, ss. 6 & 22.

When appeal  
lies.

**36.** Any Judge of the County Court appealed from, on the  
application of the appellant, his counsel or attorney, shall stay  
the proceedings in the cause for a time not exceeding ten days,  
in order to afford the party time to give the security hereinafter  
required to enable him to appeal. C. S. U. C. c. 15, s. 67;  
33 V. c. 7, s. 13.

Stay of pro-  
ceedings.

**37.** The appellant shall give or cause to be given to the  
opposite party security either—

Security.

1. By a bond executed by two persons, whether named as  
sureties or as parties interested or otherwise, in such sum as the  
Judge of the Court appealed from may direct, conditioned that  
the appellant shall abide by the decision of the cause by the  
Court of Appeal, and pay all sums of money and costs, as well  
of the suit as of the appeal, awarded and taxed to the opposite  
party; or

By bond.

2. By paying into the Court appealed from, in the manner  
provided by law, within the time herein limited for the per-  
fecting of an appeal bond, the sum of four hundred dollars, or  
such other sum as the Judge may direct. C. S. U. C. c. 15, s.  
68; 27 V. c. 14, s. 1; 33 V. c. 7, s. 13; 39 V. c. 7, s. 6.

By payment  
into Court.

**38.** In case of security being given by bond, the parties  
executing the same shall justify to the amount of the penalty  
of the bond by affidavit annexed thereto, in like manner as  
where bond given.

Affidavit of  
justification  
where bond  
given.

bail are required to justify. C. S. U. C. c. 15, s. 68; 33 V. c. 7, s. 13.

Bond to be approved and filed.

**39.** Such bond and affidavit of justification, and an affidavit of the due execution of the bond, shall be produced to the Judge, to be approved of by him; and upon being approved of shall be filed in the office of the Court appealed from until the opinion of the Court of Appeal has been given, and shall then be delivered to the successful party. C. S. U. C. c. 15, s. 68; 33 V. c. 7, s. 13.

Deposit to remain in Court till appeal disposed of.

**40.** In case security is given by deposit of a sum of money in Court, such sum shall remain in Court as security for the payment of all sums of money and costs, as well of the suit as of the appeal, awarded and taxed to the opposite party. 39 V. c. 7, s. 6.

Pleadings, &c., to be certified to Court of Appeal.

**41.** Upon the bond being so approved, or such deposit being paid into Court, the Judge shall, at the request of the appellant, certify under his hand to the Court of Appeal the pleadings in the cause, and all motions, rules or orders made, granted or refused therein, together with the Judge's charge and the judgment or decision on the same, and, where a trial has been had, the evidence and all objections and exceptions thereto, and all other papers in the cause affecting the questions raised by the appeal. C. S. U. C. c. 15, s. 68; 33 V. c. 7, s. 13.

Setting down appeals.

**42.** The appeal shall thereupon be set down for argument at the next sittings of the Court of Appeal, or at such other time as that Court may by rule or order in that behalf provide; and that Court shall give such order or direction to the Court below, touching the judgment to be given in the matter, as the law requires; and shall also award costs to either party in its discretion, which costs shall be certified to and form part of the judgment of the Court below; and upon receipt of such order, direction and certificate, the Court below shall proceed in accordance therewith. C. S. U. C. c. 15, s. 68; 33 V. c. 7, s. 13.

Costs.

#### WRITS OF ERROR.

Error not to lie on County Court judgment unless for over \$100, and only on leave.

**43.** No writ of error from either of the Superior Courts of Common Law shall be issued upon any judgment entered, or in any suit instituted in any County Court, unless the debt or damages recovered or claimed amount to upwards of one hundred dollars, and then only on affidavit and by leave of a Judge of one of the said Superior Courts in cases in which the said Judge thinks it proper to issue the said writ, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he thinks fit. 33 V. c. 7, s. 11.

Proceedings on writs of error to conform to English

**44.** The law and practice as to writs of error, and the proceedings thereon, shall unless altered as hereinafter provided, be the same as the law and practice on the twenty-fourth day

of December, 1869, in force in England in respect to writs of error from the Superior Courts of Common Law to Inferior Courts: but the Judges of the Superior Courts of Common Law in this Province may from time to time alter or amend the same by Rules of Court made as provided in "*The Administration of Justice Act.*" 33 V. c. 7, s. 12.

practice;  
power to make  
rules as to.

Rev. Stat. c.  
49, ss. 45-50.

## CHAPTER 44

### An Act respecting the Courts of General Sessions of the Peace.

Short Title, s. 1.

Courts, ss. 2, 3.

Sittings, when and where held, ss. 4, 5.

Who to preside, ss. 6-8.

Business of the Courts, ss. 9, 10.

Clerk of the Peace, s. 11.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The General Sessions Act.*" Short title.

#### COMMISSIONS OF THE PEACE.

2. The authority under which Commissions of the Peace have been issued, and the authority under which the Courts of General Sessions of the Peace have been holden and are now held, and all matters and things done by or by virtue of the same, shall be, so far as relates to the authority under which such Commissions were issued and such Courts have been holden, good and valid. C. S. U. C. c. 17, s. 1; 32 V. c. 6, s. 7.

Former Com-  
missions and  
Courts con-  
firmed.

3. The said Courts shall be in the place and stead of the County Courts of England, as far as respects any purpose of outlawry, or any proceedings therein. C. S. U. C. c. 17, s. 2.

For purposes  
of outlawry,  
General Ses-  
sions substi-  
tuted for  
County Courts  
in England.

#### SITTINGS.

4. Except in the County of York, and subject to the provisions of section eighteen of "*The Local Courts Act,*" the

General Ses-  
sions when to



be held. *See*  
Rev. Stat. c.  
42, s. 18.

sittings of the said Courts shall be held semi-annually, commencing on the second Tuesday in the months of June and December respectively in each year.

County of  
York.

2. In the County of York, the said Courts shall be held four times in the year, commencing on the first Tuesday in the months of December and March, and on the second Tuesday of the months of May and September respectively in each year. 32 V. c. 6, s. 7; 34 V. c. 12, s. 18; 36 V. c. 8, s. 59; 40 V. c. 19, s. 1.

Where to be  
held.

5. The Court of General Sessions of the Peace shall be held in the County Town of the County, but in time of war or other exigency the Lieutenant-Governor may, by proclamation, authorize the holding of the Court at some other place in the County. C. S. U. C. c. 17, s. 4.

#### WHO TO PRESIDE.

Who to be  
Chairman.

6. The Judge of the County Court of every County, or, in case of his death or absence, the Judge, Junior or acting Judge, or Deputy Judge shall preside as Chairman at the General Sessions of the Peace for the County. C. S. U. C. c. 17, s. 5. *See* 36 V. c. 8, s. 56; 37 V. c. 7, s. 59.

Sitting of asso-  
ciate Justice  
of Peace at  
General Ses-  
sions dispensed  
with when a  
Judge sits  
there.

7. Where a Judge or Junior or Deputy Judge is present, it shall not be necessary, in order to constitute a Court or sittings of the General Sessions of the Peace, that any associate or other Justice of the Peace should be present at such Court or sittings. 36 V. c. 8, s. 56.

Adjourning  
General  
Sessions owing  
to illness of  
Judge, &c.

8. Wherever, from illness or from other casualty, the Judge who is to hold the sittings of the General Sessions of the Peace, is unable to hold the same at the time appointed therefor, the Sheriff of the County, or, in his absence, his Deputy, may adjourn by his proclamation the said Court to any hour on the following day, to be by him named, and so from day to day until the Judge is able to hold such Court, or until he receives other directions from the Judge or Provincial Secretary.

Provincial  
Secretary to  
be notified.

2. The Sheriff shall forthwith notify any adjournment to the Provincial Secretary, for the information of the Lieutenant-Governor. 37 V. c. 7, s. 59.

#### READING COMMISSION.

Reading the  
Commissions  
dispensed with

9. It shall not be necessary, in opening any Court of General Sessions, to read the Commission of the Peace, or any other Commission issued for the County for which such Court is held; but such Court shall have the same powers and authorities, and proceed in the same manner, as if such Commission had been read. C. S. U. C. c. 17, s. 7.

## DELIVERY OF GAOL.

[C. S. U. C. c. 17, s. 8, *is as follows* :—

8. It shall not be necessary for any Court of Quarter Sessions to deliver the Gaol of all prisoners who may be confined upon charges of simple larceny, but the Court may leave any such cases to be tried at the next Court of Oyer and Terminer and General Gaol Delivery, if by reason of the difficulty or importance of the case, or for any other cause, it appears to them proper so to do. 7 W. 4, c. 4, s. 5.]

The Court not required to deliver the gaol.

## RESCINDING ORDERS OF COURT.

10. Except in the cases provided for by sections eleven and seventeen of "*The Division Courts Act*," and except where otherwise provided by law, wherever any order has been passed or recorded by any number of Justices of the Peace in any County, the same shall not be rescinded unless at least the same number is present. C. S. U. C. c. 17, s. 6.

No order of Justices to be rescinded unless at least same number present. Rev. Stat. c. 47, ss. 11 & 17.

## CLERK OF THE PEACE.

11. No person shall be appointed Clerk of the Peace for any County who is not a barrister-at-law of at least three years' standing at the Bar of Ontario; and, except in the County of York, every Clerk of the Peace shall be *ex-officio* County Crown Attorney for the County of which he is Clerk of the Peace. C. S. U. C. c. 17, s. 9; C. S. U. C. c. 106, s. 7.

Clerk of the Peace.

2. Except in the County of York, whenever a vacancy occurs in the office of the Clerk of the Peace for any County, in which the Clerk of the Peace was not, previous to such vacancy occurring, also County Crown Attorney for the County, the County Crown Attorney shall be *ex-officio* Clerk of the Peace for the County. 27-8 V. c. 33, s. 1; 35 V. c. 7, s. 1.

On any vacancy, County Crown Attorney to be Clerk of the Peace.

3. In the County of York, the Clerk of the Peace shall not be *ex-officio* County Crown Attorney nor the County Crown Attorney *ex-officio* Clerk of the Peace, but the said offices may respectively be held and enjoyed by different persons. 35 V. c. 7, s. 1.

In County of York, offices of Clerk of the Peace and County Crown Attorney may be held by different persons.

## CHAPTER 45.

## An Act respecting the County Judges' Criminal Courts.

---

Court in each County, s. 1.  
Style of Court, s. 2.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

Judge of the County Court constituted a Court for trial of certain offenders without jury.

1. The Judge of every County Court, or the Junior or Deputy Judge thereof, authorized to act as Chairman of the General Sessions of the Peace for any County, is constituted a Court of Record for the trial, out of Sessions and without a jury, of any persons committed to gaol on a charge of being guilty of any offence for which such person may be tried at a Court of General Sessions of the Peace, and for which the person so committed consents to be tried out of Sessions, and without a jury ; and the Court so constituted shall have the powers and duties which the Act passed in the Session of the Parliament of Canada held in the thirty-second and thirty-third years of Her Majesty's reign, and chaptered thirty-five, purports to give, so far as the Legislature of this Province can give the same. 36 V. c. 8, s. 57.

Powers and duties, 32-3 V. c. 35, (D).

Style of Court under last section.

2. The Court constituted by the preceding section shall be called "The County Judge's Criminal Court" of the County in which the same is held. 36 V. c. 8, s. 58.

---

## CHAPTER 46.

## An Act respecting the Surrogate Courts.

---

Short title, s. 1.	Removal of Cases to Court of Chancery, ss. 29-30.
Interpretation clause, s. 2.	Appeals to the Court of Appeal, s. 31.
Constitution of the Courts, ss. 3-5.	Procedure to obtain Probate, ss. 32-49.
Judges, ss. 6, 7.	Copies of wills, &c., s. 50.
Clerks :—	Administration of estates, ss. 51-63.
Surrogate Clerk, s. 8.	Administration of Estates of small value, ss. 64-67.
Registrars, ss. 9-13.	Fees and Costs, ss. 68-72.
Jurisdiction and Powers of Courts, ss. 14-19.	General Rules and Orders, ss. 73-75.
Terms, s. 20.	Past Probates and Grants, ss. 76-78.
Witnesses and Evidence in, ss. 21-27.	
Reference of Cases to Superior Courts, s. 28.	

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. This Act may be cited as "*The Surrogate Courts Act.*" Short title.

## INTERPRETATION.

2. Wherever the following words and expressions occur in Interpretation this Act, they shall be interpreted as follows, unless the context is inconsistent with the meaning hereby assigned,

(1.) "Will" shall comprehend "testament," and all other "Will." testamentary instruments of which probate may now be granted.

(2.) "Administration" shall comprehend all letters of adminis- "Adminis-  
tration of the effects of deceased persons whether with or without tration."  
the will annexed, and whether granted for general, special  
or limited purposes.

(3.) "Matters and causes testamentary" shall comprehend all "Matters and  
matters and causes relating to the grant and revocation of pro- causes testa-  
bate of wills or letters of administratfon. mentary."

(4.) "Common form business" shall mean the business of ob- "Common  
taining probate or administration where there is no contention form busi-  
as to the right thereto, including the passing of probates and ness."



administration through a Surrogate Court when the contest is terminated, and all business of a non-contentious nature to be taken in a Surrogate Court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration. C. S. U. C. c. 16, s. 86.

#### SURROGATE COURTS.

A Surrogate Court to be in each County with Judge and Registrar, &c.

**3.** In and for each County in Ontario there shall be a Court of Law and Record to be called "The Surrogate Court" of each respective County, over each of which Courts one Judge shall preside; and there also shall be a Registrar, and such officers as may be necessary for the exercise of the jurisdiction to the said Courts belonging. C. S. U. C. c. 16, s. 2.

Courts to have seals; and exemplifications and copies undersuch seal to be received in evidence.

**4.** Each of the said Surrogate Courts shall be provided with a suitable seal to be approved of by the Lieutenant-Governor and the Judges of the said Courts may respectively cause the same from time to time, with the approval of the Lieutenant-Governor, to be broken, altered or renewed; and all probates, letters of administration, grants, orders, letters of guardianship and other instruments and exemplifications, and copies thereof respectively, purporting to be sealed with the seal of any Surrogate Court, shall, in all Courts and in all parts of Ontario, be received in evidence without further proof thereof. C. S. U. C. c. 16, s. 3.

Sittings where held.

**5.** The Surrogate Court of each County shall hold its sittings in the the County Town of the County. C. S. U. C. c. 16, s. 8.

#### JUDGES.

Judges of County Courts

to be *ex officio* Judges of Surrogate Courts.

**6.** The Senior Judge of the County Court in each County shall be *ex officio* Judge of the Surrogate Court for the County; and in case of the illness or absence or at the request of any Judge of a Surrogate Court, or in case the office of Senior Judge is vacant, the Junior or acting Judge or the Deputy Judge (if any) of the County Court, shall have all the powers and privileges and perform all the duties of the Judge of the Surrogate Court. C. S. U. C. c. 16, s. 4. See 32 V. c. 22, s. 4; 36 V. c. 8, s. 47; 37 V. c. 7, s. 58; 39 V. c. 14; and Rev. Stat. c. 42, s. 11.

Judges to take oath of office.

**7.** Every Judge of a Surrogate Court appointed after this Act comes in force, shall, before executing the duties of his office, take the following oath before some one authorized by law to administer the same:

Form of Judge's oath.

"I, \_\_\_\_\_, do solemnly and sincerely promise and swear that I will duly and faithfully, and according to the best of my skill and power, execute the office of Judge of the Surrogate Court of the County \_\_\_\_\_ (or United Counties, as the case may be) of \_\_\_\_\_; So help me God."

C. S. U. C. c. 16, s. 5.

## SURROGATE CLERK.

8. There shall be a Clerk, to be called the Surrogate Clerk, who shall perform the duties required of the Surrogate Clerk by this Act, as well as the duties that, by the Rules and Orders heretofore in force relating to Surrogate Courts, or to be hereafter made under this Act, are required of such Surrogate Clerk, and also such other duties as may be required of him by the Court of Chancery; and such Surrogate Clerk shall be deemed an officer of the said Court of Chancery, and shall be paid a fixed salary not exceeding one thousand six hundred dollars yearly, and the Lieutenant-Governor shall from time to time appoint and at his pleasure remove such Clerk. C. S. U. C. c. 16, s. 31.

Surrogate Clerk to be appointed—his duties.

His salary.

## REGISTRARS.

9. On the death, resignation or removal of the Registrar of any Surrogate Court, the Clerk of the County Court shall be *ex officio* Registrar of the Surrogate Court; but this provision shall not apply to the Registrar of the Surrogate Court of the County of York, or to the Clerk of the County Court of the said County.

Who to be Registrar.

2. The Lieutenant-Governor shall appoint a Registrar of the Surrogate Court of the said County of York, to hold office during pleasure, and upon the death, resignation or removal of such Registrar, shall supply the vacancy. C. S. U. C. c. 16, s. 6; 27-8 V. c. 26, s. 1.

County of York.

10. Every Registrar of a Surrogate Court appointed after this Act takes effect, shall before he shall be entitled or qualified to act as Registrar under this Act, take the following oath before the Judge of the Court, or some other person authorized by law to administer the same:

Form of Registrar's oath.

"I, \_\_\_\_\_, do solemnly and sincerely promise and swear that I will diligently and faithfully execute the office of Registrar of the Surrogate Court of the County (or United Counties, as the case may be) of \_\_\_\_\_, and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done by myself or others on any wills or testamentary papers, or other documents or papers committed to my charge: So help me God."

C. S. U. C. c. 16, s. 7.

11. The Registrar of every Surrogate Court shall hold his office in the Court House of the County, and a room therein shall be provided for that purpose, and in the event of there being no room in the Court House, every such Registrar shall, until such room is provided, hold his office at such place as the Judge of the Court directs; and the office of every Registrar shall be a depository for all wills of living persons given to such

Registrar to have office, if room, in Court House, and his office to be a depository for the wills of living persons.

Registrar for safe keeping, and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as may from time to time be directed by Rules or Orders in that behalf heretofore in force or hereafter made under this Act. C. S. U. C. c. 16, s. 73.

Registrars to preserve testamentary instruments, papers, &c.

**12.** The Registrar of every Surrogate Court shall file and preserve all original wills and testamentary instruments of which probate or letters of administration with the will annexed is granted in such Surrogate Court, and all other papers used in any matter in such Court, subject to such regulations as may from time to time be made by any Rules or Orders under this Act in relation to the due preservation thereof, and the convenient inspection of the same. C. S. U. C. c. 16, s. 49.

Registrars to transmit to Surrogate Clerk list of probates, &c.

**13.** On the first Tuesday of every month, or oftener if required by any Rule or Order respecting Surrogate Courts in force at the time of the passing of this Act, or hereafter made under this Act, every Registrar of a Surrogate Court shall transmit by mail to the Surrogate Clerk, a list in such form and containing such particulars as may from time to time be required by such Rules and Orders, of the grants of probate and administration made by such Surrogate Court up to the last preceding Saturday, and not included in any previous return, and also a copy certified by such Registrar to be a correct copy of every will to which any such probate or administration relates, and such Registrars shall in like manner make a return of every revocation of a probate or administration. C. S. U. C. c. 16, s. 48.

#### JURISDICTION AND POWERS OF THE SURROGATE COURTS.

Testamentary jurisdiction to be exercised by the Surrogate Courts.

**14.** All jurisdiction and authority, voluntary and contentious, in relation to matters and causes testamentary, and in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons having estate or effects in Ontario, and all matters arising out of or connected with the grant or revocation of probate or administration, shall continue to be exercised in the name of Her Majesty, in the several Surrogate Courts; but this provision shall not be construed as depriving the Court of Chancery of jurisdiction in such matters. C. S. U. C. c. 16, s. 8.

Powers and jurisdiction of Surrogate Courts.

**15.** The said Surrogate Courts respectively shall have full power, jurisdiction and authority:

1. To issue process and hold cognizance of all matters relative to the granting of probates, and committing letters of administration, and to grant probate of wills and commit letters of administration of the goods of persons dying intestate, having estate, goods, rights or credits in Ontario, and to revoke such probate of wills and letters of administration;

2. To hear and determine all questions, causes and suits in relation to the matters aforesaid, and to all matters and causes testamentary; and

3. Subject to the provisions herein contained, such Courts respectively shall also have the same powers, and the grants and orders of the said Courts shall have the same effect throughout all Ontario, and in relation to the personal estate of deceased persons, as the former Court of Probate for Upper Canada, and its grants and orders respectively had in relation to those matters and to causes testamentary within its jurisdiction, and to those effects of deceased persons dying possessed of goods and chattels over twenty dollars in value in two or more Counties in Upper Canada; and all duties which by statute or otherwise were imposed on or exercised by the said Court of Probate or the Judge thereof in respect of probates, administrations and matters and causes testamentary, and the appointment of guardians and otherwise, shall be performed by the said several Surrogate Courts and the Judges thereof, within their respective jurisdictions; but no suits for legacies or suits for the distribution of residues shall be entertained by any of the said Surrogate Courts. C. S. U. C. c. 16, s. 9.

To have the same powers as the former Court of Probate in certain matters.

16. The grant of probate or letters of administration shall belong to the Surrogate Court for the County in which the testator or intestate had at the time of his death his fixed place of abode.

To what particular Courts the grant of probate or administration shall belong.

2. If the testator or intestate had no fixed place of abode in or resided out of Ontario at the time of his death, such grant may be made by the Surrogate Court for any County in which the testator or intestate had personal or real estate at the time of his death.

3. In other cases the grant of probate or letters of administration shall belong to the Surrogate Court of any County.

4. Probate or letters of administration by whatever Court granted shall, unless revoked, have effect over the personal estate of the deceased in all parts of Ontario. C.S.U.C.c.16,s.11; 40 V. c. 7, *Sched. A. (C9)*.

Effect of probate and administration

#### ORDERS AND DECREES, HOW ENFORCED.

17. Every Surrogate Court shall have the like powers, jurisdiction and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting or refusing to produce deeds, evidences or writings, or refusing to appear or to be sworn or to make affirmation or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees and judgments made or given by the Court under this Act, or under any other Acts giving jurisdiction to

Powers of Courts to enforce their orders and decrees, to be similar to those vested in County Court for like purposes



Surrogate Courts, and otherwise in relation to the matters to be enquired into and done by or under the Orders made under this Act, as are by law vested in the County Courts, as Courts of law and were prior to the nineteenth day of December, one thousand eight hundred and sixty-eight, vested in said County Courts as Courts having equitable jurisdiction, for such purposes, in relation to any suit or matter depending in such Courts. C. S. U. C. c. 16, s. 13.

#### POWERS TO TRY BY JURY.

Courts may cause questions of fact to be tried by a jury at a County Court sitting, and in like manner as in County Courts.

**18.** The said several Surrogate Courts may cause any question of fact arising in any proceeding under this Act, to be tried by a jury before the Judge of the Court; and upon order being made allowing a trial by jury, such trial shall take place at some ensuing sittings of the County Court for the County, and be conducted in the same manner as other trials by jury in the County Courts; and the parties shall be entitled to their right of challenge, and, for all purposes of or auxiliary to the trial of questions of fact by a jury before a Judge of the Surrogate Court; and, in respect of new trials, the said Surrogate Courts and the Judges thereof respectively, shall have the same jurisdiction, power and authority in all respects as belong to the County Court, and the Judges thereof, for like purposes. C. S. U. C. c. 16, s. 24.

Questions to be reduced to writing, jury to be sworn to try it, and Judges to have like authority on trial as County Court Judges.

**19.** When any such question is ordered to be tried by a jury before the Judge of a Surrogate Court, the question shall be reduced into writing in such form as the Court directs, and at the trial the jury shall be sworn to try the said question, and a true verdict give thereon according to the evidence; and upon every such trial, the Judge of the Surrogate Court shall have the same powers, jurisdiction and authority as belong to the Judge of a County Court sitting for the trial of issues of fact. C. S. U. C. c. 16, s. 25.

#### TERMS.

Terms prescribed.

**20.** In order that certain stated times may be fixed for hearing and determining matters and causes in contentious cases and business of a contentious nature in the said Surrogate Courts respectively, there shall be four Terms or times of sitting in each year for the purposes aforesaid, which (except in the County of York) shall severally commence on the first Monday in the months of January, April, July and October, and end on the Saturday of the same week. C. S. U. C. c. 16, s. 10.

In the County of York.

**2.** The Terms of the Surrogate Court of the County of York shall commence on the first Monday in January and April, and on the second Monday in June and October, in each year, and shall end on the Saturday of the same week. 40 V. c. 19, s. 3.

3. And the Judges of the several Courts may appoint one or more days for the giving of judgment after Term in the same way as is provided by law in respect to County Courts. C. S. U. C. c. 16, s. 10.

Giving judgment after Term.

#### WITNESSES, EVIDENCE, &c.

21. Every Surrogate Court may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may either before or after, or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and each of the said Courts may, by writ of *subpœna* or *subpœna duces tecum* (as the case may be), require such attendance and order any deeds, evidences or writings, to be produced before itself or otherwise. C. S. U. C. c. 16, s. 12.

Power to require attendance of parties or witnesses, and to examine them,

As to production of deeds and instruments, &c.

22. Whether any suit or other proceeding be or be not pending in the Court with respect to any probate or administration, every Surrogate Court may, on motion or petition or otherwise in a summary way, order any person to produce and bring before the Registrar of the Court or otherwise, as the Court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

Orders and proceedings in respect to the production of instruments purporting to be testamentary.

2. If it be not shown that any such paper or writing is in the possession or under the control of such person, but if it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined before the Registrar or in open Court or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made such default; and the costs of any such motion, petition or other proceeding, shall be in the discretion of the Court. C. S. U. C. c. 16, s. 14.

Examination of persons touching such instruments.

23. The Judges and Registrars of the said Surrogate Courts respectively shall have full power to administer oaths in matters and causes testamentary and in all other matters in any of the said Courts; and Commissioners for taking affidavits in

Judges, Registrars and Commissioners in Superior Courts to

have power to administer oaths.

any of the Superior Courts shall also have full power respectively to administer oaths in all matters and causes testamentary and in all other matters in the said Courts to parties desirous of making affidavit or deposition before them respectively. C. S. U. C. c. 16, s. 15.

[Sec. 16 of C. S. U. C. c. 16, is as follows :

Penalty for forging or counterfeiting seal or signature of officers or tendering same in evidence.

16. If any person forges the signature of any Judge or Registrar of a Surrogate Court, or of any Commissioner for taking affidavits as aforesaid, or forges or counterfeits any seal of a Surrogate Court, or knowingly uses or concurs in using any such forged or counterfeit signature or seal, or tenders in evidence any document with a false or counterfeit signature of such Judge, Registrar or Commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, such person shall be guilty of felony, and liable to be imprisoned in the Provincial Penitentiary for any term not exceeding seven years. 22 V. c. 93, s. 12.

#### *Evidence in Contentious Matters.*

Mode of taking evidence in contentious matters.

21. Subject to the regulations established by the Rules and Orders heretofore in force respecting Surrogate Courts, or hereafter to be made under this Act, the witnesses, and where necessary, the parties in all contentious matters where their attendance can be had, shall be examined orally by or before the Judge of the Surrogate Court in open Court; and subject to any such regulations as aforesaid, the parties may verify their respective cases by affidavit; but the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of the opposite party orally in open Court as aforesaid, and, after such cross-examination, may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed. C. S. U. C. c. 16, s. 20.

When affidavits may be used.

Subject to *vide* *cross* examination.

#### *Commissions to Examine Witnesses.*

Courts may issue commissions for the examination of witnesses.

25. Where a witness in any such matter is without the limits of Ontario, or where by reason of his illness or otherwise the Court does not think fit to enforce the attendance of the witness in open Court, any of the said Surrogate Courts may order a commission to issue for the examination of such witness on oath upon interrogatories or otherwise, or if the witness be within the jurisdiction of the Court, may order the examination of such witness on oath upon interrogatories or otherwise before any person to be named in such order for the purpose. C. S. U. C. c. 16, s. 21.

Provisions of certain Acts to apply.

26. All the powers given to the County Courts by Law for enabling the said Courts to issue commissions and make orders for the examination of witnesses in actions depending in such Courts and to enforce such examination; and all the provisions of law relating to County Courts for enforcing

examinations, or otherwise, applicable thereto and to the witnesses examined, shall extend and be applicable to the said several Surrogate Courts, and to the examinations of witnesses under the commissions and orders of the said Courts, and to the witnesses examined, as if such Courts were County Courts, and the matter before them respectively were an action pending in a County Court. C. S. U. C. c. 16, s. 22.

### *Rules of Evidence.*

**27.** The rules of evidence observed in the Superior Courts of Law shall be applicable to and observed in the trial of all questions of fact in the said several Surrogate Courts. C. S. U. C. c. 16, s. 23.

Rules of evidence in Superior Courts to be observed.

### REFERENCE TO A SUPERIOR COURT.

**28.** In every case in which there is contention as to the grant of probate or administration, and the parties in such case thereto agree, such contention shall be referred to and determined by either of Her Majesty's Superior Courts of Law or by the Court of Chancery on a case to be prepared, and the Surrogate Court having jurisdiction in such matter shall not grant probate or administration until such contention is terminated and disposed of by judgment, decree or otherwise. C. S. U. C. c. 16, s. 27.

In cases of contention, the matter may, by consent, be referred for adjudication to one of the Superior Courts.

### REMOVAL TO THE COURT OF CHANCERY.

**29.** Any cause or proceeding in the said Surrogate Courts in which any contention arises as to the grant of probate or administration, or in which any disputed question may be raised (as to law or facts), relating to matters and causes testamentary, shall be removable by any party to such cause or proceeding into the Court of Chancery by order of a Judge of the said Court, to be obtained on a summary application supported by affidavit, of which reasonable notice shall be given to the other parties concerned. C. S. U. C. c. 16, s. 28.

In certain cases of contention, matter to be referred to Chancery.

**2.** The Judge making such order may impose such terms as to payment or security for costs or otherwise as to him seems fit; but no cause or proceeding shall be so removed unless it is of such a nature and of such importance as to render it proper that the same should be withdrawn from the jurisdiction of the Surrogate Court and disposed of by the Court of Chancery, nor unless the personal estate of the deceased exceeds two thousand dollars in value. C. S. U. C. c. 16, s. 29.

Terms as to costs. Certain cases not to be so removed.

**30.** Upon any cause or proceeding being so removed as aforesaid, the Court of Chancery shall have full power to determine the same, and may cause any question of fact arising therein to be tried by a jury, and otherwise deal with the same as with any

Powers of the Court of Chancery and transmission of final order



to Surrogate Court.

cause or claim originally entered in the said Court of Chancery ; and the final order or decree made by the said Court of Chancery in any cause or proceeding removed as aforesaid, shall, for the guidance of the said Surrogate Court, be transmitted by the Surrogate Clerk to the Registrar of the Surrogate Court from which such cause or proceeding was removed. C. S. U. C. c. 16, s. 30.

#### APPEALS TO THE COURT OF APPEAL.

Persons considering themselves aggrieved by any judgment, &c., may appeal to the Court of Appeal.

**31** Any person considering himself aggrieved by any order, sentence, judgment or decree of any Surrogate Court, or being dissatisfied with the determination of the Judge thereof in point of law in any matter or cause under this Act, may, within fifteen days next after such order, sentence, judgment, decree or determination, appeal therefrom to the Court of Appeal or to a single Judge of such Court, in the manner and, subject to the regulations provided for by the Rules and Orders respecting the Surrogate Courts heretofore in force, or by Rules or Orders made under this Act ; and the said Court of Appeal or Judge shall hear and determine such appeals ; but no such appeal shall be had or lie unless the value of the goods, chattels, rights or credits to be affected by such order, sentence, judgment, decree or determination exceeds two hundred dollars ; and in case of an appeal to a single Judge, he may, in his discretion, and upon such terms as he thinks proper, refer the appeal to the said Court of Appeal. C. U. S. C. c. 16, s. 26 ; 40 V. c. 7, *Sched. A.* (61).

Appeals not to lie in certain cases.

#### PRACTICE.

##### *Proofs to lead grant.*

Practice of the Courts, general rule as to.

**32** Unless otherwise provided by this Act or by the Rules or Orders respecting Surrogate Courts heretofore in force, or hereafter to be made under this Act, the practice of the said several Surrogate Courts shall, so far as the circumstances of the case will admit, be according to the practice in Her Majesty's Court of Probate in England, as it stood on the fifth day of December, one thousand eight hundred and fifty-nine. C. S. U. C. c. 16, s. 17.

Proof, &c., requisite for obtaining grant of probate or administration where deceased resided in Ontario.

**33** On every application to a Surrogate Court for probate of will or letters of administration where the testator or intestate was resident in Ontario at the time of his death, the place of abode of such testator or intestate at the time of his death shall be made to appear by affidavit of the person or some one of the persons applying for the same ; and thereupon and upon proof of the will, or in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration (as the case may be) may be granted under the seal of the Surrogate Court to which such application has been

so made: and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of Ontario. C. S. U. C. c. 16, s. 32.

Effect of such probate or administration.

**34.** On every application for probate of a will or letters of administration where the testator or intestate had no fixed place of abode in or resided out of Ontario at the time of his death, the same shall be made to appear by affidavit of the person or some one of the persons applying for such probate or administration, and that the deceased died leaving personal or real property within the County in the Surrogate Court of which such application is made, or leaving no personal or real property in Ontario as the case may be, and that notice of the application has been published at least three times successively in the *Ontario Gazette*; and thereupon and upon proof of the will, or in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted under the seal of such Surrogate Court; and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of Ontario. C. S. U. C. c. 16, s. 33; 40 V. c. 7, *Sched. A.* (62).

Where testator, &c., had no fixed place of abode in or resided out of Ontario, upon what proof probate or administration to be granted, &c.

Its effect.

**35.** The affidavit as to the place of abode and personal property of a testator or intestate under the two next preceding sections, for the purpose of giving a particular Court jurisdiction, shall be conclusive for the purpose of authorizing the exercise of such jurisdiction; and no grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the particular County at the time of his death, or had not personal or real estate therein at the time of his death; and every probate and administration granted by a Surrogate Court shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit as is hereby required; but in case it is made to appear to the Judge of any Surrogate Court before whom any matter is pending under this Act, that the place of abode of the testator or intestate, or the situation of his property, has not been correctly stated in the affidavit, such Judge may stay all further proceedings and make such order as to the costs of the proceedings before him as he thinks just. C. S. U. C. c. 16, s. 34.

Affidavit grounding application for grant to be conclusive for exercise of jurisdiction, unless shown to be incorrect.

But the Judge may stay proceedings in case of incorrect statement.

*Proof when applicant not next of kin.*

**36.** In case application is made for letters of administration by any person not entitled to the same as next of kin to the deceased, the next of kin or others having or pretending interest in the personal estate of the deceased resident in Ontario, shall be cited or summoned to see the proceedings, and to show cause why the administration should not be granted to the person applying therefor; and if neither the next of kin

Proof, &c., requisite for obtaining grant to party not next of kin to intestate.

nor any person of the kindred of the deceased happens to reside in Ontario, then a copy of such citation or summons shall be served or published in such manner as may be provided for by any Rules or Orders in that behalf. C. S. U. C. c. 16, s. 35.

Temporary  
administration  
in certain  
cases.

**37.** If the next of kin, usually residing in Ontario and regularly entitled to administer, happens to be absent from Ontario, the Surrogate Court having jurisdiction in the matter may, in its discretion, grant a temporary administration, and appoint the applicant, or such other person as the Court thinks fit, to be administrator of the personal estate of such deceased person for a limited time, or to be revoked upon the return of such next of kin as aforesaid. C. S. U. C. c. 16, s. 36.

Security to be  
given.

**38.** The administrator so appointed shall give such security as the Court directs, and shall have all the rights and powers of a general administrator, and shall be subject to the immediate control of the Court. C. S. U. C. c. 16, s. 37.

#### *Notice of Applications.*

As to trans-  
mission of  
notice of  
applications  
for grants of  
probates, &c.,  
to Surrogate  
Clerk by  
Registrars.

**39.** In case of an application to any Surrogate Court for the grant of probate or administration, notice thereof shall, by the Registrar of the Court, by letter post paid, be transmitted to the Surrogate Clerk by the next post after such application, and such notice shall specify the name and description or addition, if any, of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit or affidavits made in support of such application, and the name of the person by whom the application has been made, and such other particulars as may be directed by any Rules or Orders in that behalf. C. S. U. C. c. 16, s. 38.

Proceedings to  
be stayed till  
certificate re-  
ceived from  
Surrogate  
Clerk.

**40.** Unless upon special order or decree of such Surrogate Court, no probate or administration shall be granted in pursuance of such application until such Registrar has received a certificate, under the hand of the Surrogate Clerk, that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said Surrogate Clerk shall forward as soon as may be to such Registrar. C. S. U. C. c. 16, s. 39.

Surrogate  
Clerk to file  
notices,

**41.** All notices in respect of applications in the several Surrogate Courts shall be filed and kept by the said Surrogate Clerk. C. S. U. C. c. 16, s. 40.

And examine  
all notices, &c.

**42.** The Surrogate Clerk shall, with reference to every such notice, examine all notices of such applications received from the several other Surrogate Court Registrars, so far as appears to be necessary, to ascertain whether or no application for probate or administration in respect of the goods of the same deceased person has been made in more than one Surrogate

Court, and he shall communicate with the Surrogate Court Registrars as occasion may require in relation to such applications. C. S. U. C. c. 16, s. 41.

**43.** In case it appears by the certificate of the Surrogate Clerk that application for probate or administration has been made to two or more Surrogate Courts, the Judges of such Courts respectively shall stay proceedings therein, leaving the parties to apply to one of the Judges of the Court of Chancery to give such direction in the matter as to him seems necessary. C. S. U. C. c. 16, s. 42.

Proceedings if application has been made to more than one Surrogate Court.

To be decided in Chancery.

**44.** On application made to such Judge of the Court of Chancery, he shall enquire into the matter in a summary way, and adjudge and determine what Surrogate Court has jurisdiction and shall proceed in the matter. C. S. U. C. c. 16, s. 43.

Decree of Judge in Chancery as to what Court shall have jurisdiction.

**45.** The Judge of the Court of Chancery may order costs to be paid by any of the applicants, and the order shall be enforced by the Court of Chancery. C. S. U. C. c. 16, s. 44.

The Judge in Chancery shall determine as to costs.

**46.** The determination of such Judge shall be final and conclusive, and so soon as may be after such determination has been made, the Surrogate Clerk shall transmit a certified copy thereof to the Registrars of the several Surrogate Courts wherein such applications as aforesaid have been made. C. S. U. C. c. 16, s. 45.

His decision to be final.

### *Caveats.*

**47.** Caveats against the grant of probate or administration may be lodged with the Surrogate Clerk or with the Registrar of any Surrogate Court, and, subject to any Rules or Orders under this Act, the practice and procedure under such caveats shall as nearly as may be correspond with the practice and procedure under caveats in use on the fifth day of December, one thousand eight hundred and fifty-nine, in Her Majesty's Court of Probate in England. C. S. U. C. c. 16, s. 46.

As to caveats, where to be lodged and proceedings in respect to.

**48.** Immediately on a caveat being lodged in any Surrogate Court, the Registrar of such Court shall send a copy thereof to the Surrogate Clerk to be entered among the caveats lodged with him, and upon notice of application by the Registrar of a Surrogate Court under the thirty-ninth section being received, the Surrogate Clerk shall forward to such Registrar, so soon as may be, notice of any caveat that has been so lodged as aforesaid touching such application, and such notice shall accompany or be embodied with the certificate mentioned in the fortieth section. C. S. U. C. c. 16, s. 47.

To be transmitted to the proper Surrogate Courts.



*Proof of Wills in Solemn Form.*

Where a will affecting real estate is proved in solemn form, or is the subject of contentious proceedings, heirs, &c., may be cited, but not necessarily so, save on order of Court.

**49.** Where proceedings are taken under this Act for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or where in any other contentious cause or matter under this Act the validity of a will is disputed, unless the will affects only personal estate, the heir or heirs at law, devisees or other persons having or pretending to have any interest in the real estate affected by the will, may, subject to the provisions of this Act and to the Rules and Orders relating to Surrogate Courts heretofore in force or hereafter to be made under this Act, be cited to see proceedings or be otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, subject to such Rules and Orders and to the discretion of the Court; but nothing herein contained shall make it necessary to cite the heirs at law, or other person having or pretending interest in the real estate of a deceased person, unless the Court with reference to the circumstances of the case, directs the same to be done. C. S. U. C. c. 16, s. 50.

## COPIES OF WILLS.

Official copy of the whole or part of a will may be obtained.

**50.** An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the Registrar of the Surrogate Court where the will has been proved or the administration granted, on payment of such fees as may be fixed for the same by the Rules and Orders heretofore in force or hereafter made under this Act. C. S. U. C. c. 16, s. 53.

## ADMINISTRATION PENDENTE LITE.

Administration *pendente lite* may be granted.

Rights and powers of the administrator.

**51.** Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of administration, the Court in which such suit is pending may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court and act under its direction; and the Court may direct that such administrator shall receive out of the personal estate of the deceased such reasonable remuneration as the Court thinks fit. C. S. U. C. c. 16, s. 54.

## ADMINISTRATION WITH WILL ANNEXED.

Administration with the will annexed.

**52.** Where administration is granted with the will annexed, a bond shall (unless it is otherwise provided by law) be given to the Judge of the Court as in other cases and with like effect, and

unless otherwise provided for by this Act or the Rules or Orders relating to Surrogate Courts from time to time in force, the practice as to &c.  
 practice and procedure in respect to such administrations and in respect to such bonds and the assignment thereof shall, so far as the circumstances of the case will admit, be according to the practice in such cases in Her Majesty's Court of Probate in England, on the fifth day of December, one thousand eight hundred and fifty-nine. C. S. U. C. c. 16, s. 55.

**53.** In every case where any person applies to be appointed an administrator with the will annexed, and a bond is by law required to be given, he shall in his application state, and in his affidavit of the value of the property devolving shall depose to the value or probable value of all the real estate over which, or over any estate in which, the executor or executors named in the will or codicil were by the said will or codicil clothed with any power of disposition, or of all the real estate, which, in case of no executor being appointed, was by the will or codicil directed to be disposed of, without any person being appointed to effect such disposition; and in every such case the bond to be given by such person upon his obtaining a grant of administration with the said will annexed, shall, as respects the amount of the penalty of the bond, and the justification of the sureties, include the amount of the value or probable value so stated and deposed to; and the condition of the bond, in addition to the other provisions thereof, shall provide that the administrator shall well and truly pay over and account for, to the person or persons entitled to the same, all moneys and assets to be received by him for or in consequence of the exercise by him of any power over real estate created by the will or codicil, and which may be exercised by him. 33 V. c. 18, s. 1; 36 V. c. 20, s. 39.

Applicant for administration with the will annexed to depose to value of the realty.

Condition the bond, and justification of sureties.

#### POWER AS TO APPOINTMENT OF ADMINISTRATOR.

**54.** Where a person has died wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor was at the time of the death of such person resident out of Ontario, and it appears to the Court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased or of any part of such personal estate other than the person who if this Act had not been passed would by law have been entitled to a grant of administration to such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who if this Act had not passed would by law have been entitled to a grant thereof, but the Court in its discretion may appoint such person as the Court thinks fit upon his giving such security (if

General power as to appointment of administrator under special circumstances.

Discretionary power of Court

as to who shall be appointed, any) as the Court directs, and every such administration may be as limited as the Court thinks fit. C. S. U. C. c. 16, s. 56.

After grant of administration no person to act as executor.

**55.** After any grant of administration no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased as to the personal estate comprised in or affected by such grant of administration, until such administration has been recalled or revoked. C. S. U. C. c. 16, s. 57 ; 36 V. c. 20, s. 45.

#### REVOCATION OF TEMPORARY GRANTS.

Revocation of temporary grants of administration not to prejudice actions or suits.

**56.** In case, before the revocation of any temporary administration, any proceedings at Law or in Equity have been commenced by or against any administrator so appointed, the Court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which has been made consequent thereupon, and the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceedings had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such Court may direct. C. S. U. C. c. 16, s. 58.

#### VALIDITY OF PAYMENTS UNDER REVOKED GRANTS.

Payments under probates or administration afterwards revoked to be valid.

**57.** In case any probate or administration is revoked under this Act, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof, shall be a legal discharge to the person making the same ; and the executor or administrator who has acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration may be afterwards granted might have lawfully made. C. S. U. C. c. 16, s. 59.

Persons, &c., making payment upon probate granted to be indemnified, &c.

**58.** All persons and corporations making or permitting to be made any payment or transfer *bona fide* upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this Act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration. C. S. U. C. c. 16, s. 60.

#### EXECUTOR RENOUNCING.

Right of executor renouncing probate, to cease absolutely.

**59.** Where any person renounces probate of the will of which he is appointed executor (or one of the executors), the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of

his effects shall and may without any further renunciation go, devolve and be committed in like manner as if such person had not been appointed executor. C. S. U. C. c. 16, s. 61.

SECURITIES.

**60.** So much of the Act passed in the twenty-first year of King Henry the Eighth, and chaptered five, and of the Act passed in the twenty-second and twenty-third years of King Charles the Second, and chaptered ten, and of the Act passed in the first year of King James the Second, and chaptered seventeen, as requires any surety, bond or other security to be taken from a person to whom administration may be committed, shall not extend to or be in force in Ontario. C. S. U. C. c. 16, s. 62.

Repeal of certain provisions requiring sureties to administrator. 21 H. viii, c. 5. 22-3 Car. ii, c. 10; 1 Jas. ii, c. 17.

**61.** Except where otherwise provided by law, every person to whom any grant of administration is committed shall give a bond to the Judge of the Surrogate Court from which such grant is made, to enure for the benefit of the Judge of such Court for the time being (or in case of the separation of Counties, to enure for the benefit of any Judge of a Surrogate Court to be named by the Court of Chancery for that purpose), with one or more surety or sureties as may be required by the Judge of such Surrogate Court, conditioned for the due collecting, getting in and administering the personal estate of the deceased, and the bond shall be in the form prescribed by the Rules and Orders now in force or hereafter made under this Act; and in cases not provided for by such Rules and Orders, such bond shall be in such form as the Judge of the Surrogate Court may by special order direct. C. S. U. C. c. 16, s. 63.

Persons receiving grants of administration to give bonds, &c.

**62.** Subject to the provisions of the fifty-third section of this Act, such bond shall be in a penalty of double the amount under which the personal estate and effects of the deceased have been sworn, unless the Judge in any case thinks fit to direct (as he may do) that the same shall be reduced, and the Judge may also direct that more bonds than one may be given, so as to limit the liability of any surety to such amount as the Judge thinks reasonable. C. S. U. C. c. 16, s. 64.

Penalty in bonds, &c., and as to dividing liabilities of sureties.

**63.** The Judge of every Surrogate Court, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, may order the Registrar of the Court to assign the same to some person to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond in his own name, both at Law and in Equity, as if the same had been originally given to him, instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in

Power of Surrogate Courts as to assignment of bonds.



respect of any breach of the condition of the said bond; and all bonds heretofore given or taken in any Surrogate Court, and now in force, may in like manner be assigned under the authority of the Judge of a Surrogate Court, and the assignee shall be entitled to sue and recover thereon in his own name, and the same may be enforced in the same way and to the same extent as bonds given under this Act. C. S. U. C. c. 16, s. 65.

#### ESTATES OF SMALL VALUE.

Proceedings in  
Surrogate  
Court for ad-  
ministration.

**64.** Where the whole estate and effects, real and personal, of an testator or intestate do not exceed in value the sum of two hundred dollars, his widow, or any one or more of his children or next of kin, or his executors may apply to the Judge of the Surrogate Court within the County in which the testator or intestate had his fixed place of abode at the time of his death, and the Registrar of the said Court shall fill up the usual papers required by the Surrogate Court to lead to a grant of probate of the will of such testator or letters of administration of the estate and effects of the said testator or intestate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the said Court, and shall then transmit a notice of the application by post to the Surrogate Clerk at Toronto; and the said Registrar, on obtaining the approval or order of the said Judge of the Surrogate Court, shall in due course make out and seal the probate of the will of such testator, or letters of administration of the estate and effects of the said testator or intestate to be delivered to the party so applying for the same without the payment of any fee for the same, save as is provided by the sixty-sixth section of this Act. 38 V. c. 18, s. 1; 39 V. c. 7, s. 26.

Proof of rela-  
tionship.

Judge to be  
satisfied that  
the value of  
the estate less  
than \$200.

**65.** The said Judge of the Surrogate Court may require such proof as he may think sufficient to establish the identity and relationship of the applicant; and if the said Judge has reason to believe that the whole estate and effects of which the testator or intestate died possessed exceed in value the said sum of two hundred dollars, he shall refuse to proceed with the application under the last preceding section until he is satisfied as to the real value thereof. 38 V. c. 18, ss. 2 & 3; 39 V. c. 7, s. 26.

Scale of fees.

**66.** Such fees as the Lieutenant-Governor in Council may think proper, shall be payable to the Judges and Registrars of the Surrogate Courts, on proceedings under the sixty-fourth and sixty-fifth sections, but the total amount for all proceedings and services to be charged to applicants, shall not in any one case exceed the sum of two dollars. 38 V. c. 18, ss. 4 & 5. *See Order in Council, Ont. Gaz. 6th March, 1875.*

Rules and  
Orders.

**67.** Any rules and orders requisite for carrying the said sections into effect, shall be framed, and may from time to time

be altered by the Judges appointed and authorized to make Rules and Orders under the seventy-third and seventy-fourth sections of this Act. 38 V. 18, s. 4; 40 V. c. 7, *Sched. A* (63).

#### FEES AND COSTS.

**68.** The fees mentioned in Schedule A. to this Act shall be payable to the Crown in stamps, subject to the provisions of *The Act respecting Law Stamps*, on proceedings under this Act, and shall belong to and form part of the Consolidated Revenue Fund of this Province. C. S. U. C. c. 16, s. 67; 40 V. c. 7, *Sched. A* (65). See 33 V. c. 9.

As to fees payable to the Crown.  
Rev. Stat. c. 21

**69.** The Judges of the several Surrogate Courts may demand and take to their own use the fees mentioned in Schedule B. to this Act, and such fees shall be collected by the Registrars of the said Courts on or before each proceeding and paid over to the said Judges, and annual returns of such fees, up to the thirty-first day of December in each year, shall be made by such Registrars on or before the first day of February in each year. C. S. U. C. c. 16, s. 69; 40 V. c. 7, *Sched. A* (66).

As to fees to be taken by Judges, &c., to their own use.

**70.** The Registrars and officers of the said Surrogate Courts, and attorneys and barristers respectively practising therein, shall be entitled to take for the performance of duties and services under this Act, such fees as may be fixed under the provision hereinafter contained. C. S. U. C. c. 16, s. 70.

Fees to officers.

**71** The table of fees fixed by the Judges appointed in pursuance of the fourteenth section of "*The Surrogate Courts Act*, 1858," to be taken by the Registrars and officers of the Surrogate Courts, and by barristers and attorneys practising therein in respect to business under that Act, and the fees to be payable in respect of searches, inspection and copies of and extracts from records, wills and other documents in the custody of or under the control of the said Surrogate Courts respectively, are hereby continued, until altered under the authority of this Act; and no other fees than those specified and allowed in such tables or altered of fees shall be taken or received by such Registrars, officers, barristers and attorneys respectively. C. S. U. C. c. 16, s. 71.

Judges may, alter the amount of fees as fixed under 22 V. c. 93, s. 14.

No other fees to be taken.

**72.** The bill of any attorney for any fees, charges or disbursements in respect of any business transacted in a Surrogate Court, whether contentious or otherwise, or any matter connected therewith, shall, as well between attorney and client as between party and party, be subject to taxation in such Surrogate Court, and the mode in which such bill shall be referred for taxation, and the person by whom the costs of taxation shall be paid, shall be regulated by the Rules and Orders heretofore in force or hereafter made under this Act, and the certificate of the

As to taxation of costs.

Registrar of the amount at which such bill is taxed shall be subject to appeal to the Judge of the Court. C. S. U. C. c. 16, s. 72.

#### RULES OR ORDERS REGULATING PROCEDURE, &C.

Existing rule and orders continued. 22 V. c. 93.

**73.** The General Rules and Orders made by the Judges appointed in pursuance of the fourteenth section of "*The Surrogate Courts Act*, 1858," are hereby continued; and until an appointment is made by the Lieutenant-Governor under the authority of the next section, the said Judges shall continue and possess the same powers as before this Act takes effect, and may from time to time repeal, amend, add to or alter any existing General Rules and Orders as to them seems fit, and may exercise the powers in the next succeeding section, and in the seventy-first section of this Act mentioned. C. S. U. C. c. 16, s. 18.

Rules and orders for regulating the procedure of the Courts.

**74.** The Lieutenant-Governor at any time after this Act takes effect may appoint one of the Judges of the Court of Appeal, one of the Judges of the Superior Courts of Common Law, one of the Judges of the Court of Chancery, and one County Court Judge in Ontario, with power to the said Judges or any two of them from time to time to make other Rules and Orders:

1. For regulating the procedure and practice of the said Surrogate Courts, and in relation to their jurisdiction and proceedings under this Act;

2. For regulating the duties of the Surrogate Clerk—the duties of the several Surrogate Court Registrars and other officers of such Courts;

3. For determining what shall be deemed contentious and what non-contentious business;

4. (Subject to the express provisions of this Act) for regulating the manner of appealing from the decisions of the said Surrogate Courts; and

5. Generally for carrying the provisions of this Act into full and beneficial effect. C. S. U. C. c. 16, s. 19; 40 V. c. 7, *Sched. A* (64).

Procedure in other matters of jurisdiction to be regulated by rules made under this Act.

**75.** The powers conferred by the seventy-third and seventy-fourth sections of this Act, shall extend and apply to the making from time to time of Rules and Orders for regulating, simplifying and expediting proceedings in the Surrogate Courts, and fixing and regulating the fees to be taken as aforesaid, under the provisions of this Act or any other Act, giving powers or jurisdiction to the said Surrogate Courts, or to the Judges thereof. C. S. U. C. c. 16, s. 84.

## EFFECT OF PAST PROBATES AND GRANTS.

**76.** Legal grants of probate and administration made before the first day of September, one thousand eight hundred and fifty-eight, and grants of probate and administration heretofore made legal, shall have the same force and effect as if they had been granted under this Act. C. S. U. C. c. 16, s. 77.

As to effect of grants of Probate or Administration before 1st Sept., 1858.

**77.** In case any probate or administration had been granted before the first day of September, one thousand eight hundred and fifty-eight, and the deceased had personal estate in Upper Canada not within the limits of the jurisdiction of the Court by which such probate or administration was granted, or otherwise not within the operation of the grant, the Court to which, under this Act, an original application for probate or administration might be made, may grant probate or administration only in respect of such personal estate not covered by any former probate or administration, and the grant shall be limited accordingly. C. S. U. C. c. 16, s. 78.

In case *bona notabilia* not within the jurisdiction.

**78.** All books, records, wills, grants, probates, letters of administration, administration bonds, notes of administration, Court books, deeds, processes, acts, proceedings, writs, documents and every other instrument relating exclusively or principally to matters and causes testamentary, deposited in the Court of Chancery, by the Judge of the Court of Probate, the Registrar thereof, and every other person who had the custody of books, documents and papers of or belonging to that Court, pursuant to the fifty-fifth section of "*The Surrogate Courts Act*, 1858," shall remain so deposited, so as to be easy of reference, under the control and direction of the Court. C. S. U. C. c. 16, s. 79.

Wills, papers, &c., of former Court of Probate to remain deposited in Court of Chancery.

22 V. c. 93, s. 55.

## SCHEDULE "A."

(Section 68)

## FEES PAYABLE TO THE CROWN.

*On proceedings in the offices of Registrars.*

	\$	cts
On every application for probate or administration or for guardianship (including notice thereof to Surrogate Clerk, but not postage) .....	0	50
On certificate of Surrogate Clerk upon such application (including transmission to Registrar, but not postage) .....	0	50
On every instrument or process with seal of Court .....	0	50
Entry and notification of caveat, not including postage .....	0	50
On every grant of probate or administration, as follows, viz. :		
Where the property devolving is under \$1,000 .....	0	50
For every additional \$1,000.....	0	50
On every final judgment in contentious or disputed cases.....	1	00
On deposit of wills for safe custody, each.....	0	50



*On proceedings in the office of the Surrogate Clerk.*

	\$	cts.
On every search for grant of probate, administration, guardianship, or other matter in Clerk's office (other than searches on application of Registrars) . . . . .	0	50
On every certificate of search or extract . . . . . (if exceeding three folios, 10 cents per folio.)	1	00
On every other certificate issued by the Surrogate Clerk . . . . .	0	50
On every order made on application to a Judge in Chancery, and transmission of same, exclusive of postage . . . . .	0	80
On entry of every appeal . . . . .	1	00
On every decree on appeal and transmission, exclusive of postage . . . . .	3	00
On entry of caveat . . . . .	0	50
On every decree or order on appeal . . . . .	2	50

C. S. U. C. c. 16, *Sched. A.*; C. S. U. C. c. 33, s. 6, *Sched.*; 27-8 V. c. 5, s. 21; 33 V. c. 9; 40 V. c. 7, *Sched. A.* (65).

## SCHEDULE "B."

(Section 69)

## FEES ALLOWED TO JUDGE.

On every grant of probate or administration :		
Where the property devolving is under \$1,200 . . . . .	2	00
Where the property devolving is from \$1,200 to \$3,000 . . . .	3	00
Where the property devolving is from \$3,000 to \$4,000 . . . .	4	00
And so for every additional \$1,000, the additional sum of . .	1	00
On every appointment of a guardian . . . . .	2	00
On every order . . . . .	0	50
On every special attendance, or attendance for purpose of audit .	1	00
For every day's sittings in contentious or disputed cases . . . . .	2	00
On evidence if taken before Judge (per folio) . . . . .	0	20

## CHAPTER 47.

## An Act respecting the Division Courts.

Preliminary, ss. 1, 2.	Establishment on separation of
Constitution of Courts:—	United Counties, ss. 13-18.
Nature of and number in each	Judges or persons who may hold, ss.
County, ss. 3-7.	19-23.
Time and place of holding, ss. 8-10.	Clerks and Bailiffs, security by,
Alteration of Divisions and estab-	duties and fees of, ss. 24-52.
lishment of new Divisions, ss.	Jurisdiction of Courts, ss. 53-61.
11-12.	Process and Procedure, ss. 62-94.

Witnesses and Evidence, ss. 95-105.	Offences and Penalties:—
Judge's decision, ss. 106-108.	Forging seal, &c., C. S. U. C. c. 19, s. 181. p. 526.
Jury cases, ss. 109-123.	Contempt of Court, s. 217.
Proceedings to garnish debts, ss. 124-146.	Resisting officers, C.S.U.C. c. 19, s. 184, p. 526.
Arbitrations, ss. 147-151.	Misconduct of officers, s. 218.
Confessions of debt, s. 152-153.	Extortion by officers, s. 219.
Costs, s. 154.	Negligence of officers, ss. 220-222.
Proceedings not to be set aside for want of form, s. 155.	Enforcement of fines, ss. 223-225.
Proceedings to enforce judgments: Execution, ss. 156-176.	Protection of officers acting under warrants, ss. 226-229.
Examination of judgment debtors, ss. 177-189.	General provisions as to actions for things done under this Act, ss. 230-233.
Absconding debtors, ss. 190-208.	Disposal of fines, s. 234.
Claims of landlords and others in respect to goods seized, ss. 209-215.	Disposal of money in Court, ss. 235-236.
Costs in actions on Division Court Court judgments, s. 216.	General Rules and Orders, ss. 237-244.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as "*The Division Courts Act.*" Short title of Act.
2. In the construction of this Act, Interpretation

"County" shall include two or more Counties united for judicial purposes; and in any form or proceeding the words "United Counties" shall be introduced where necessary. C. S. U. C. c. 19, s. 1.

#### THE COURTS.

3. The Division Courts, and the limits and extent thereof existing at the time this Act takes effect, shall continue until altered by law. C. S. U. C. c. 19, s. 2. Courts continued.

4. There shall not be less than three or more than twelve Division Courts in each County, of which Division Courts there shall be at least one in each City and County Town. C. S. U. C. c. 19, s. 3. Number of Courts in Counties and Cities.

5. The Court in each Division shall be called "The First Division Court in the County of \_\_\_\_\_," Designation of Court.  
(or as the case may be.) C. S. U. C. c. 19, s. 9.

6. Every Division Court shall have a seal, with which all process of the Court shall be sealed or stamped, and such seal shall be paid for out of the Consolidated Revenue Fund. C. S. U. C. c. 19, s. 4. Each Court to have a seal.

Not to be  
Courts of  
Record.

7. The said Division Courts shall not be held to constitute Courts of Record, but the judgments in the said Courts shall have the same force and effect as judgments of Courts of Record. C. S. U. C. c. 19, s. 5; 32 V. c. 23, s. 1.

Time and  
place of hold-  
ing Courts.

8. A Court shall be holden in each Division once in every two months, or oftener in the discretion of the Senior or the acting County Judge; and the Judge may appoint and from time to time alter the times and places within such Divisions, when and at which such Courts shall be holden. C. S. U. C. c. 19, s. 6.

Division  
Courts accom-  
modation.

9. The Municipality in which a Division Court is held shall furnish a Court room and other necessary accommodation for holding said Court, not in connection with any hotel. 36 V. c. 48, s. 362.

If there be no  
proper court-  
room, &c., the  
Judge may  
hold Court in  
any suitable  
place.

2. In case a proper Court-room, and other necessary accommodation for the holding of the Division Court are not furnished by the Municipality in which the Court is held, the Judge may hold the Court in any suitable place in the Division, or in any other Division of the County in which suitable accommodation is provided; and the owner, lessee or tenant of the building in which the Court is so held, shall for the use of the said building be entitled to receive from the Municipality whose duty it was to provide proper accommodation for the Court, the sum of five dollars for every day on which the Court is held in said building. 37 V. c. 7, s. 72.

Expenses for  
rent.

The Lieuten-  
ant-Governor  
may, in cer-  
tain cases,  
regulate hold-  
ing of Courts.

10. If the Justices of the Peace for any County, in General Sessions assembled, certify to the Lieutenant-Governor that in any Division of the County, from the amount of business, remoteness or inaccessibility, it is expedient that the Court should not be held so often as once in every two months, the Lieutenant-Governor in Council may order the Court to be held at such periods as to him seems meet, and may revoke the order at pleasure, but a Court shall be held in the Division at least once in every six months. C. S. U. C. c. 19, s. 7; 38 V. c. 12, s. 1.

General Ses-  
sions may  
alter number  
and limits of  
Divisions.

11. The Justices of the Peace in each County in General Sessions assembled, may, subject to the restrictions in this Act contained, appoint, and from time to time alter the number, limits and extent of every Division, and shall number the Divisions, beginning at number one; but no resolution or order made under the provisions of this section shall be altered or rescinded, unless public notice of the intention so to alter or rescind is made and proclaimed in open Court, at the next previous sittings of such General Sessions of the Peace. C. S. U. C. c. 19, s. 8; 38 V. c. 12, ss. 2 & 3.

Resolutions  
and orders as  
to Divisions  
not to be  
altered till  
after notice.

**12.** The Judge of a County Court may, in his discretion, upon the petition of the Municipal Council of any Township or United Townships in which no Division Court has already been established, praying that a Division Court may be established in and for such Township or United Townships, establish and hold a Division Court therein, and the Court so established shall be numbered and called the Establishment by the County Judge of a Division Court in Townships, on petition of Township Council. Division Court of the County in which such Township or United Townships is or are situated, taking the number next after the highest number of the Courts then existing in such County.

**2.** No business shall be transacted in any such Court until after the establishment thereof has been certified by the County Judge to the Lieutenant-Governor in Council, together with the petition praying for the same, nor until after an order has been passed by the Lieutenant-Governor in Council approving thereof. Court must be confirmed by Lieutenant-Governor in Council. 29 V. c. 31, s. 1.

**13.** Where a Junior County separates from a Senior County or Union of Counties, the Division Courts of the United Counties which were before the separation wholly within the territorial limits of the Junior County, shall continue to be Division Courts of the Junior County, and all proceedings and judgments shall be had therein, and shall continue proceedings and judgments of the said Division Courts respectively; and all such Division Courts shall be known as Division Courts of such Junior County by the same numbers respectively as they were before, until the Justices of the Peace of the Junior County, in General Sessions assembled, appoint the number, limits and extent of the Divisions for Division Courts within the limits of such Junior County, as provided in the eleventh section of this Act. On separation of Junior from Senior County, Courts to continue same till altered by Sessions. C. S. U. C. c. 19, s. 10; 38 V. c. 12, s. 2.

**14.** Wherever the Justices of the Peace of any County, in General Sessions assembled, alter the number, limits or extent of the Division Courts within such County, all proceedings and judgments had in any Division Court before the day when such alteration takes effect shall be continued in such Division Court of the County as the Judge directs; and shall be considered proceedings and judgments of such Court. On alteration of Divisions, Judge to direct in what Court proceedings to be continued. C. S. U. C. c. 19, s. 11; 38 V. c. 12, s. 2.

**15.** In case a Junior County is separated from a Union of Counties, or the proceedings of any of the Division Courts of a Senior County are transferred to any other Division Court within the County upon the order of the Judge, the Clerks or other officers of such Division Courts who hold any writs or documents appertaining to any such Courts or the business thereof, shall deliver up the same to such persons as the Judge directs, and any person refusing to deliver up the same shall be liable to be proceeded against in the same manner as persons wrongfully holding papers and documents under the provisions of the Clerks and officers to deliver papers to such persons as Judge directs.



C. S. U. C.  
c. 19, s. 48.  
*See p. 491.*

forty-eighth section of chapter nineteen of the Consolidated Statutes for Upper Canada. C. S. U. C. c. 19, s. 12.

After separation of Junior from Senior County, proceedings in certain cases to be continued in Senior County.

**16.** If after the separation of a Junior County from a Union of Counties, the territorial limits of any of the Division Courts of the former Union are partly within the Junior and partly within the Senior County, all proceedings commenced in such Division Courts of the former Union shall be continued to completion in the Court where the proceedings were originally commenced, or in such other Division Court of the Senior County as the Judge thereof directs; and the Clerks and other officers of the said Division Courts of such Senior County in possession of any writs or documents appertaining to any such Court or to the business thereof, shall deliver over the same to the Clerk of such Division Court of such County as the Judge thereof directs. C. S. U. C. c. 19, s. 13.

General Sessions of Senior County to regulate Divisions of Senior County after separation.

**17.** At the first sittings of the General Sessions of the Peace for any Senior County, after the issue of any proclamation for separating a Junior from a Senior County, the Justices there present shall appoint the number, (not less than three, nor more than twelve,) the limits and extent of the several Divisions within such County, and the time when such change of Divisions shall take effect.

2. If the Justices do not make such change at the first sittings they may do so at any other sittings of such Court.

Resolutions and orders as to Divisions not to be altered till after notice.

3. No resolution or order made under the provisions of this section shall be altered or rescinded unless public notice of the intention so to alter or rescind is made and proclaimed in open Court at the next previous sittings of such General Sessions of the Peace. C. S. U. C. c. 19, s. 14; 38 V. c. 12, ss. 2 & 4.

Clerks of the Peace to record time and place for holding Courts.

**18.** The Clerk of the Peace, in a book to be by him kept, shall record the Divisions declared and appointed, and the times and places of holding the Courts, and the alterations from time to time made therein, and he shall forthwith transmit to the Lieutenant-Governor a copy of the record. C. S. U. C. c. 19, s. 15.

#### THE JUDGE.

County Court Judges to preside.

**19.** The Division Courts shall be presided over by the County Court Judges or Junior or Deputy Judges in their respective Counties. C. S. U. C. c. 19, s. 16; 40 V. c. 7, *Sched. A* (67). *See Rev. Stat. c. 42.*

Junior Judge to hold Division Courts.

2. The Junior Judge for any County shall (subject to any other arrangement from time to time made with the Senior Judge or made by the Judges of a County Court District which includes such County) preside over the Division Courts of the

County. 40 V. c. 7, *Sched. A* (67). See 32 V. c. 22, s. 4; 36 V. c. 8, s. 47; 37 V. c. 7, s. 58;

3. The appointment of a Junior Judge shall not prevent or excuse the Judge of the County Court from presiding at any of the Division Courts within his County when the public interests require it. C. S. U. C. c. 15, s. 7. Senior Judge to hold Division Courts when expedient.

20. In case of the illness or absence of the Judge, a Judge of the County Court of any other County may hold the Court, or the first mentioned Judge may appoint some barrister of the Bar of Ontario to act as his Deputy; and the barrister so appointed shall, as Judge of the Division Court, during the time of his appointment, have all the powers and privileges, and be subject to all the duties vested in or imposed by law on the Judge by whom he has been appointed. C. S. U. C. c. 19, s. 17; 40 V. c. 7, *Sched. A* (68). Who to preside in case of illness or absence of Judge.

21. The County Judge so appointing or the barrister so appointed Deputy shall forthwith send to the Lieutenant-Governor notice of such appointment, specifying the name, residence and profession of such Deputy Judge, and the cause of his appointment. C. S. U. C. c. 19, s. 18. Lieutenant-Governor to be notified of appointment of Deputy.

22. No such appointment shall be continued for more than one month without a renewal of the like notice; and in case the Lieutenant-Governor disapproves of such appointment, he may annul the same. C. S. U. C. c. 19, s. 19. Appointment, how long to continue.

23. In case the Judge or the acting Judge, from illness or any casualty, does not arrive in time or is not able to open a Division Court on the day appointed for that purpose, the Clerk or Deputy Clerk of the Court shall, after eight o'clock in the afternoon, by proclamation, adjourn the Court to an earlier hour on the following day, and so from day to day adjourning over any Sunday or legal holiday, until the Judge or acting Judge arrives to open the Court, or until he receives other directions from the Judge or acting Judge. C. S. U. C. c. 19, s. 20. Clerks or Deputy Clerks may adjourn Court if Judge does not arrive in time.

#### THE CLERKS AND BAILIFFS, &C.

24. For every Division Court there shall be a Clerk and a Bailiff or Bailiffs, who shall be British subjects, and shall respectively perform the duties of their office as regulated by Act of the Legislature and by Rules or Orders made by the Board of County Judges. C. S. U. C. c. 19, s. 21; 32 V. c. 23, s. 23. Every Court to have Clerk and Bailiffs. Duties of Clerks and Bailiffs.

25. No County Court Clerk or practising barrister or solicitor shall be appointed Clerk of a Division Court. C. S. U. C. c. 19, s. 22. Who disqualified.

Judge to appoint and remove Clerk and Bailiffs.

**26.** The Judge shall from time to time appoint and may at his pleasure remove any Clerk or Bailiff. C. S. U. C. c. 19, s. 23.

*Securities.*

Clerks and Bailiffs of Division Courts to give security.

**27.** Subject to the provisions of section twenty-four of *The Act respecting Public Officers* every Clerk and Bailiff of a Division Court shall give security, by a covenant according to the form of the Schedule to this Act, or in words to the same effect, with so many sureties, being freeholders and residents within the County, and in such sums, as the County Judge directs, and, under his hand, approves and declares sufficient. C. S. U. C. c. 19, s. 25.

Rev. Stat. c. 15, s. 24.

Before Clerk or Bailiff enters on his duties, covenant to be filed with Clerk of the Peace.

**28.** Before any such Clerk or Bailiff enters upon the duties of his office, the covenant of himself and sureties, approved as aforesaid, shall be filed in the office of the Clerk of the Peace in the County in which the Division Court is situate; and for filing and granting a certificate thereof the Clerk of the Peace may demand from such Clerk or Bailiff the sum of one dollar. C. S. U. C. c. 19, s. 26.

To be available to suitors, &c.

**29.** Such covenant shall be available to, and may be sued upon in any Court of competent jurisdiction by any person suffering damages by the default, breach of duty or misconduct of any such Clerk or Bailiff. C. S. U. C. c. 19, s. 27.

Certified copy of covenant to be received as evidence.

**30.** A copy of every such covenant, certified by the Clerk of the Peace, shall be received in all Courts as sufficient evidence of the due execution and of the contents thereof, without further proof. C. S. U. C. c. 19, s. 28.

If surety dies, a new surety to be furnished.

**31.** If any surety in any such covenant dies, becomes resident out of Ontario, or insolvent, the County Judge shall notify the Clerk or Bailiff for whom such person became surety, of such death, departure or insolvency, and such Clerk or Bailiff shall, within one month after being so notified, give anew the like security, and in the same manner as hereinbefore provided, or forfeit his office of Clerk or Bailiff. C. S. U. C. c. 19, s. 29.

Sureties of Clerks and Bailiffs of Division Courts may discontinue suretyship.

**32.** Any person who has become surety for any Clerk or Bailiff, and who is no longer disposed to continue such responsibility, may give notice thereof to the Clerk or Bailiff, and to the Judge of the County Court, and in such case the said Clerk or Bailiff shall, under penalty of forfeiture of his office, furnish the security of a new surety in lieu of the surety so giving notice, and shall have the necessary bond or covenant approved by the Judge and completed within one month after such notice; and all accruing responsibility on the part of the person giving such notice shall cease upon and after the perfecting and approval by the Judge of the new security. 39 V. c. 17, s. 3; 40 V. c. 7, *Sched. A.* (69).

**33.** Sections fifteen to twenty both inclusive of *The Act respecting Public Officers*, shall, with the substitution of "The Judge of the Court" for "The Lieutenant-Governor," apply to securities given by a Clerk or Bailiff of a Division Court. 39 V. c. 17, s. 4. *See also ss. 24-27 of Rev. Stat. c. 15.*

Certain sections 15-20 of Rev. Stat. c. 15 to apply to securities given by Division Court Clerks and Bailiffs.

**34.** Nothing hereinbefore contained shall discharge or exonerate any of the parties to such former covenant from their liability on account of any matter done or omitted before the renewal of the covenant as aforesaid. C. S. U. C. c. 19, s. 30

Liability of formersureties

#### *Clerk's Duties.*

**35.** The Clerk may (with the approval of the Judge), from time to time, when prevented from acting, by illness or other unavoidable accident, appoint a Deputy to act for him, with all the powers and privileges and subject to like duties, and may remove such Deputy at his pleasure, and the Clerk and his sureties shall be jointly and severally responsible for all the acts and omissions of the Deputy. C. S. U. C. c. 19, s. 33.

When Clerk may appoint Deputy.

**36.** The Clerk shall issue all summonses, which summonses shall be by him filled up and shall be without blanks either in date or otherwise at the time of delivery for service; he shall also furnish copies of the same with the notice thereon, according to the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts. C. S. U. C. c. 19, s. 34.

Clerk to issue summonses and furnish copies, &c.

**37.** The Clerk shall cause a note of all summonses, orders, judgments, executions and returns thereto, to be from time to time fairly entered in a book to be kept in his office; and shall sign his name on every page of such book; and such signed entries, or a copy thereof certified as a true copy by the Clerk, shall be admitted in all Courts and places as evidence of such entries, and of the proceedings referred to thereby, without any further proof. C. S. U. C. c. 19, s. 42.

Clerk to keep a record of writs and judgments.

**38.** The Clerk shall also issue all warrants, precepts and writs of execution filled up and without blanks; he shall tax costs subject to the revision of the Judge, register all orders and judgments of the Court, and keep an account of all fines payable or paid into Court, and of all suitors' moneys paid into and out of Court, and shall enter an account of all such fines and moneys in a book to be kept by him for that purpose, which book shall be open to all persons desirous of searching the same, and shall at all times be accessible to the Judge, who shall examine the same quarterly or oftener and compare the accounts hereinafter mentioned with such book, and shall certify on each such account that he has examined the same, and believes it to be correct, or if he does not believe it to be correct,

Clerks to issue executions, tax costs and keep account of fines, &c.



he shall state his objections thereto, and the Clerk shall thereupon forward the account with such certificate to the County Crown Attorney. C. S. U. C. c. 19, s. 36.

Clerks to submit accounts to County Crown Attorneys.

**39.** The Clerk, at the periods from time to time appointed by the Lieutenant-Governor, shall submit his said accounts to be audited or settled by the County Crown Attorney. C. S. U. C. c. 19, s. 37.

Clerks of County and Division Courts to deliver to County Crown Attorney a verified account of fines.

**40.** The Clerk of every Division Court shall, from time to time, as often as required so to do by the County Crown Attorney of his County, and at least once in every three months, deliver to him, verified by the affidavit of such Clerk sworn before the Judge or a Justice of the Peace of the County, a full account in writing of all fines levied by the Court, accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may make out of any such fine, in pursuance of the power hereinafter given. C. S. U. C. c. 19, s. 38.

Clerk of Division Court to furnish Judge with a verified account of moneys paid in and out of Court.

**41.** The Clerk of each Division Court, when required by the Judge, shall, from time to time, furnish him with a full account in writing verified by the oath of the Clerk sworn before the Judge or a Justice of the Peace, of the moneys received into and paid out of the Court by any suitors or other parties under any orders, judgments or process of the Court, and of the balance in Court belonging to any such suitors or parties. C. S. U. C. c. 19, s. 40.

Division Court Clerks to furnish the Judge with semi-annual accounts of fees and emoluments.

**42.** The Clerk of every Division Court shall, half-yearly at least, furnish to the Judge of his Court a detailed statement of all fees and emoluments of his Court; which statement shall be sworn to before such Judge, and it shall be the duty of such Judge to require such statement and to file the same with the County Crown Attorney. C. S. U. C. c. 19, s. 41.

Clerk annually to make list of suitors' money in Court.

**43.** The Clerk shall, annually in the month of January, make out a correct list of all sums of money belonging to suitors in the Court, which have been paid into Court and have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the parties for whom or on whose account the same were so paid. C. S. U. C. c. 19, s. 43.

Copy of list to be put up in Court House and in Clerk's office.

**2.** A copy of such list shall be put up and remain at all times in the Clerk's office and during Court hours, in some conspicuous part of the Court House, or place where the Court is held. C. S. U. C. c. 19, s. 44.

*Disposal of Books and Papers when Clerk changed.*

Upon resignation, removal or death of

**44.** All accounts, moneys, books, papers, and other matters in the possession of the Clerk by virtue of or appertaining to

his office, shall, upon his resignation, removal or death, immediately become the property of the County Crown Attorney of the County in which the Division is situate, who shall hold the same for the benefit of the public until the appointment of another Clerk, to whom he shall deliver over the same, but not until such Clerk and his sureties have executed and filed the covenant hereinbefore mentioned, C. S. U. C. c. 19, s. 47.

Clerk, County Crown Attorney to become possessed of papers.

[Section 48 of C. S. U. C. c. 19, is as follows:—

48. Any person wrongfully holding or getting possession of such accounts, moneys, books, papers and matters aforesaid, or any of them shall be guilty of a misdemeanor; and upon the declaration in writing of the Judge presiding over the Division Court for the time being, that a person has obtained or holds such wrongful possession thereof, and upon the order of a Judge of either of Her Majesty's Superior Courts of Law, founded thereon, such person shall be arrested by the Sheriff of any County in which he is found, and shall by such Sheriff be committed to the Common Gaol of his County, there to remain without bail until one of such Superior Courts or a Judge thereof be satisfied that such person has not and never had nor held any such matters or moneys, or that he has fully accounted for or delivered up the same to such County Crown Attorney, or until he be otherwise discharged by due course of law. 13, 14 V. c. 53. s. 13.]

Punishment of person wrongfully holding moneys, books or papers.

*Duties of Bailiffs.*

45. The Bailiffs shall serve and execute all summonses, orders, warrants, precepts and writs delivered to them by the Clerk for service, whether Bailiffs of the Court out of which the same issued or not, and shall so soon as served return the same to the Clerk of the Court of which they are respectively Bailiffs; but, subject to the provisions of the sixty-third section, they shall not be required to travel beyond the limits of their Division, or be allowed to charge mileage for any distance travelled beyond the limits of the County in which the Court of which they are respectively Bailiffs is situated. C. S. U. C. c. 19, s. 79.

Bailiffs to serve writs.

46. Every Bailiff shall exercise the authority of a Constable during the actual holding of the Court of which he is a Bailiff, with full power to prevent breaches of the peace, riots or disturbances within the Court-room or building in which the Court is held, or in the public streets, squares, or other places within the hearing of the Court, and may, with or without warrant, arrest all parties offending against the meaning of this clause, and forthwith bring such offenders before the nearest Justice of the Peace, or any other judicial officer having power to investigate the matter or to adjudicate thereupon. C. S. U. c. 19, s. 183.

Bailiff to exercise duty of constable during holding of Court.

*Fees of Clerks and Bailiffs, &c.*

47. The Clerks and Bailiffs shall be paid by fees, as provided and allowed by the General Rules or Orders applicable to

Clerks and Bailiffs to be paid by fees.

Division Courts, heretofore in force or hereafter to be made by the Board of County Judges, and approved under the provisions of the two hundred and thirty-eighth section of this Act.

Fees of jurors and appraisers. 2. Until otherwise provided by such General Rules or Orders, the fees to be taken and received by Jurors and Appraisers shall be as follows:—

Each Juror sworn in any cause, (*out of the money deposited with the Clerk for Jurors' Fees*) . . . . . Ten Cents.

To each Appraiser, during the time actually employed in appraising goods, (*to be paid in first instance by the plaintiff and allowed in costs of the cause*). . . . . Fifty cents per day.

See C. S. U. C. c. 19, ss. 32 & 49; 32 V. c. 23. s. 22.

Table of Fees to be hung up in Clerk's office. 48. A table of all such fees shall be hung up in some conspicuous place in the offices of the several Clerks. C. S. U. C. c. 19, s. 49.

Fees to be paid by plaintiff or defendant in first instance. 49. The fees upon every proceeding shall, on or before such proceeding, be paid in the first instance by the plaintiff, or other party at whose instance the proceeding takes place. C. S. U. C. c. 19, s. 50.

How enforced if not paid. 50. If the fees are not paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, the payment thereof may, by order of the Judge, be enforced by execution in like manner as a judgment of the Court, by such ways and means as any debt or damages ordered to be paid by the Court can be recovered. C. S. U. C. c. 19, s. 51.

Bailiff's fees to be paid to Clerk before execution issues. 51. At the time of the issue of the execution, the Bailiff's fees thereon shall be paid to the Clerk, and shall by him be paid over to the Bailiff, upon the return of the execution, and not before, but if the Bailiff does not become entitled to any part, or becomes entitled to a part only, of such fees, the whole or surplus shall on demand be by the Clerk repaid to the plaintiff or party from whom the fees were received. C. S. U. C. c. 19, s. 52.

Bailiff to forfeit fees if he neglects to return writ. And such fees to go to Con. Rev. Fund. 52. If the Bailiff neglects to return any process or execution within the time required by law, he shall for each such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the Clerk, who shall keep a special account thereof, and account for and pay over the same to the County Crown Attorney, to be by him paid over to the Provincial Treasurer, to form part of the Consolidated Revenue Fund. C. S. U. C. c. 19, s. 53.

## JURISDICTION OF DIVISION COURTS.

**53.** The Division Courts shall not have jurisdiction in any of the following cases : Cases in which Court has no jurisdiction.

1. Actions for any gambling debt ; or
2. Actions for spirituous or malt liquors drunk in a tavern or alehouse ; or
3. Actions on notes of hand given wholly or partly in consideration of a gambling debt or for such liquors ;
4. Actions of ejectment or actions in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question ; or
5. Actions in which the validity of any devise, bequest or limitation under any will or settlement may be disputed ; or
6. Actions for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage ; or
7. Actions against a Justice of the Peace for anything done by him in the execution of his office, if he objects thereto. C. S. U. C. c. 19, s. 54.

**54.** The Judge of every Division Court may hold plea of, and may hear and determine in a summary way, for or against persons, bodies corporate or otherwise : Cases in which the Court has jurisdiction.

1. All personal actions where the amount claimed does not exceed forty dollars ; and
2. All claims for debt or for any sum payable under or upon any contract for the payment of money, or for payment in labour or in any kind of goods or commodities or in any other manner than in money, where the amount or balance claimed does not exceed one hundred dollars ;

and except in cases in which a jury is legally demanded by a party as hereinafter provided, the Judge shall be sole Judge in all actions brought in such Division Courts, and shall determine all questions of law and fact in relation thereto, and he may make such orders, judgments or decrees thereupon as appear to him just and agreeable to equity and good conscience, and every such order, judgment and decree, shall be final and conclusive between the parties. C. S. U. C. c. 19, s. 55.

**55.** Upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities or in any other Judge may order payment in money,



although contract not for payment in money.

manner than in money, the Judge, after the day has passed on which the goods or commodities ought to have been delivered or the labour or other thing performed, may give judgment for the amount in money as if the contract had been originally so expressed. C. S. U. C. c. 19, s. 56.

Jurisdiction in replevin.

**56.** The said Division Courts shall also have jurisdiction in all actions of replevin, where the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of forty dollars, as provided in "*The Replevin Act.*" 23 V. c. 45, ss. 6 & 7.

Rev. Stat. c. 53, s. 5.

No privilege to exempt from jurisdiction of Court.

**57.** No privilege shall be allowed to any person to exempt him from suing and being sued in a Division Court; and any executor or administrator may sue or be sued therein; and the judgment and execution shall be such as in like cases would be given or issued in the Superior Courts. C. S. U. C. c. 19, s. 57.

Minors may prosecute for wages.

**58.** A minor may sue in a Division Court for any sum not exceeding one hundred dollars, due to him for wages, in the same manner as if he were of full age. C. S. U. C. c. 19, s. 58.

Causes of action not to be divided.

**59.** A cause of action shall not be divided into two or more suits for the purpose of bringing the same within the jurisdiction of a Division Court, and no greater sum than one hundred dollars shall be recovered in any action for the balance of an unsettled account, nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds four hundred dollars. C. S. U. C. c. 19, s. 59; 39 V. c. 15, s. 2.

Judgment to be full discharge.

**60.** A judgment of a Division Court upon a suit brought for the balance of an account shall be a full discharge of all demands in respect of the account of which such suit was for the balance, and the entry of judgment shall be made accordingly. C. S. U. C. c. 19, s. 60.

Causes may be removed to Superior Court by *certiorari* in certain cases.

**61.** In case the debt or damages claimed in any suit brought in a Division Court amounts to forty dollars and upwards, and in case it appears to any of the Judges of the Superior Courts of Common Law that the case is a fit one to be tried in one of the said Superior Courts, and in case any Judge thereof grants leave for that purpose, such suit may by writ of *certiorari* be removed from the Division Court into either of the said Superior Courts upon such terms as to payment of costs or other terms as the Judge making the order thinks fit. C. S. U. C. c. 19, s. 61.

#### PROCESS AND PROCEDURE.

##### *Division in which suits to be entered.*

In what Courts suits

**62.** Any suit cognizable in a Division Court may be entered and tried in the Court holden for the Division in which the

cause of action arose or in which the defendant or any one of several defendants resides or carries on business at the time the action is brought, notwithstanding that the defendant at such time resides in a County or Division different from the one in which the cause of action arose. C. S. U. C. c. 19, s. 71. maybe entered and tried.

**63.** Any such suit may be entered and tried and determined in the Court the place of sitting whereof is the nearest to the residence of the defendant, and such suit may be entered, tried and determined irrespective of the place where the cause of action arose, and notwithstanding that the defendant at such time resides in a County or Division other than the County or Division in which such Division Court is situate, and such suit entered. 27-8 V. c. 27, s. 1. Suits may be brought and tried in the Court nearest to the defendant's residence.

2. It shall be sufficient if the summons in such case be served by a Bailiff of the Court out of which it issues, in the manner provided in the seventieth section of this Act; and upon judgment recovered in any such suit a writ of *fiery facias* against the goods and chattels of the defendant, and all other writs, process and proceedings to enforce the payment of the said judgment, may be issued to the Bailiff of the Court, and be executed and enforced by him in the County in which the defendant resides, as well as in the County in which the judgment was recovered. 27-8 V. c. 27, s. 2. Service of summons in such cases. Execution.

**64.** In case any person desires to bring an action in a Division other than as in the two next preceding sections mentioned, any County Judge may by special order authorize a suit to be entered and tried in the Court of any Division in his County adjacent to the Division in which the defendant or one of several defendants resides, whether such defendant resides in the County of the Judge granting the order or in an adjoining County. C. S. U. C. c. 19, s. 72. When suits may be brought in other than the regular Divisions.

**65.** Every Clerk or Bailiff may sue and be sued for any debt due to or by him, as the case may be, separately or jointly with any other person in the Court of any next adjoining Division in the same County, in the same manner, to all intents and purposes, as if the cause of action had arisen within such next adjoining Division, or the defendant was resident therein, and no Clerk or Bailiff shall bring any suit in the Division Court of which he is such Clerk or Bailiff. C. S. U. C. c. 19, s. 83. Clerks and Bailiffs may sue and be sued in adjoining Divisions.

**66.** Any suit or action, by or against a Judge or Junior Judge of a County Court, which is within the competence of a Division Court, may be brought in a Division Court of any County adjoining that in which such Judge or Junior Judge resides; and any suit or action by or against any Stipendiary Magistrate, if the same is within the jurisdiction of any Division Court of his District, may be brought in any Division Court of any adjoining County or District. 40 V. c. 8, s. 14. *See also Rev. Stat. c. 90, s. 45.* Actions against County Judges or Stipendiary Magistrates for amounts within Division Court jurisdiction

Clerk to forward summonses for service in other Divisions.

**67.** The Clerk of any Division Court shall, when required, forward all summonses to the Clerk of any other Division Court for service, and the Clerk of any Division Court shall receive any summonses sent to him by any other Division Court Clerk for service, and he shall hand the same to the Bailiff for service, and when returned, shall receive the same from the Bailiff and return them to the Clerk from whom he received them, and every Clerk shall enter all such proceedings in a book to be by him kept for that purpose. C. S. U. C. c. 19, s. 73

*Entry of claim, Service, &c.*

Plaintiff to enter copy of his claim with Clerk.

**68.** The plaintiff shall enter with the Clerk a copy (and, if necessary, copies) of his account, claim or demand in writing in detail (and in cases of tort, particulars of his demand) and each such copy shall be numbered according to the order in which the copies are entered, and thereupon a summons shall be issued, bearing the number of the account, claim or demand on the margin thereof, and corresponding in substance with such form as may be prescribed by the General Rules or Orders relating to Division Courts from time to time in force, according to the nature of the account, claim or demand, and on the trial of the cause no evidence shall be given by the plaintiff of any cause of action except such as is contained in the account, claim or demand so entered. C. S. U. C. c. 19, s. 74.

Plaintiff to furnish particulars of claim to the Clerk for service.

**69.** The plaintiff shall furnish the Clerk with the particulars of his claim or demand, and the Clerk shall annex the plaintiff's particulars to the summons, and he shall furnish copies thereof, to the proper person to serve the same. C. S. U. C. c. 19, s. 35.

Service of summons to be ten days.

**70.** The summons, with a copy of the account or of the particulars of the claim or demand attached, shall be served ten days at least before the return day thereof. C. S. U. C. c. 19, s. 75.

When service to be 15 days and when 20 days.

**71.** In case none of the defendants reside in the County in which the action is brought, but one of them resides in an adjoining County, the summons shall be served fifteen days, and in case none of the defendants reside in the County within which the action is brought, or in an adjoining County, the summons shall be served twenty days at least before the return day thereof. C. S. U. C. c. 19, s. 76.

When service to be personal or otherwise.

**72.** In case the amount of the account, claim or demand exceeds eight dollars, the service shall be personal on the defendant, and in case the amount does not exceed eight dollars, the service may be on the defendant, his wife, or servant or some grown person being an inmate of the defendant's dwelling-house, or usual place of abode, trading or dealing. C. S. U. C. c. 19, s. 77.

**73.** The postages of papers required to be served out of the Postages.  
Division, and sent by mail for service, shall be costs in the cause.  
C. S. U. C. c. 19, s. 78.

**74.** Where there is no Bailiff of the Court in which the ac- How process,  
tion is brought, or where any summons, execution, subpoena, &c., may be  
process or other document, is required to be served or executed executed at a  
elsewhere than in the Division in which the action is brought, it distance.  
may, in the election of the party, be directed to be served and  
executed by the Bailiff of the Division in or near to which it is  
required to be executed, or by such other Bailiff or person as  
the Judge, or Clerk issuing the same, orders, and may, for that  
purpose, be transmitted by post, or otherwise, direct to such  
Bailiff or person, without being sent to or through the Clerk.  
32 V. c. 23, s. 18.

**75.** In cases mentioned in the last preceding section, it shall Duties of Bai-  
be the duty of such Bailiff to serve and execute all such sum- liff and lia-  
monses, executions, subpoenas, process and other documents, and bility of sure-  
make return thereof with reasonable diligence, and to pay over, ties.  
on demand, all moneys by him levied or received thereon; and  
for neglect or default therein, in addition to any other remedy  
against such Bailiff, he and his sureties shall be liable, on their  
covenant to the parties aggrieved, as if such summonses, execu-  
tions, subpoenas, process and documents had issued from or re-  
lated to some suit in the Court of which he is Bailiff. 32 V. c.  
23, s. 19.

**76.** The Clerk shall prepare affidavits of service of all sum- Clerk to pre-  
monses issued out of his Court, or sent to him for service pare affidavits  
stating how the same were served, the day of service, and the of service, &c.  
distance the Bailiff necessarily travelled to effect service, and  
the affidavits shall be annexed to or endorsed on the summonses  
respectively: but the Judge may require the Bailiff to be sworn  
in his presence, and to answer such questions as may be put to  
him touching any service or mileage. C. S. U. C. c. 19, s. 80.

**77.** In case of a debt or demand against two or more per- One of several  
sons, partners in trade or otherwise jointly liable, but residing partners may  
in different Divisions, or one or more of whom cannot be found, be sued in cer-  
one or more of such persons may be served with process, and tain cases.  
judgment may be obtained and execution issued against the per-  
son or persons served, notwithstanding others jointly liable have  
not been served or sued, reserving always to the person or per-  
sons against whom execution issues his or their right to demand  
contribution from any other person jointly liable with him. C.  
S. U. C. c. 19, s. 81.

**78.** Whenever judgment has been obtained against any such Bailiff may  
person, and the Judge certifies that the demand proved was seize property  
strictly a partnership transaction, the Bailiff, in order to satisfy of firm on  
his judgment and costs and charges thereon, may seize and sell certificate of  
Judge.



the property of the firm, as well as that of the defendants who have been served. C. S. U. C. c. 19, s. 82.

*Judgment by default where specially endorsed summons.*

In process filed by special summons, the material particulars entered by the Clerk, when claim not disputed, &c.

**79.** In actions brought in any Division Court for the recovery of any debt or money demand, where the particulars of the plaintiff's claim, with reasonable certainty and detail, are endorsed on or attached to the summons, and a copy of the summons and particulars, with a notice in the form prescribed by the General Rules or Orders relating to Division Courts from time to time in force, annexed to or endorsed on such copy, has been duly served, then, unless the defendant has left with the Clerk, within eight days after the day of such service (where the service is required to be ten days before the return), or within twelve days after the day of such service (where the service is required to be fifteen days or twenty days before the return) a notice to the effect that he disputes the claim, or some part, and how much thereof, final judgment may be entered by the Clerk on the return of such summons, or at any time within one month thereafter for the amount claimed in such particulars, or so much thereof as has not been disputed, if the plaintiff is content with judgment for such part; and execution may afterwards issue thereon at the instance of the plaintiff. 32 V. c. 23, s. 2.

Summons, particulars and affidavit to be filed.

2. The final judgment so entered may be in the form prescribed by the General Rules or Orders relating to Division Courts from time to time in force, but no such judgment shall be so entered until the summons and particulars, with an affidavit of the due service of both, have been filed. 32 V. c. 23, s. 3.

Judge may set aside judgment and order trial of case.

3. The Judge may set aside such judgment, and permit the case to be tried, on sufficient grounds shown, on such terms as to costs and otherwise as he thinks just. 32 V. c. 23, s. 2.

Leave to dispute at any time before judgment.

**80.** The Judge, at any time before judgment actually entered, although the time for giving such notice disputing the plaintiff's claim has expired, may, on sufficient grounds shown, and on such terms as he thinks just, grant leave to the defendant to dispute the plaintiff's claim, in which case the requisite notice disputing such claim shall immediately be left with the Clerk, and also sent to the plaintiff, by prepaid letter through the post or otherwise. 32 V. c. 23, s. 4.

*Trial.*

Judge may summarily dispose of cause or non-suit plaintiff.

**81.** In cases in which a trial is to be had, the defendant shall, on the day named in the summons, either in person, or by some person on his behalf, appear in the Court to answer, and, on answer being made, the Judge shall, without further pleading or formal joinder of issue, proceed, in a summary way, to try the cause and give judgment; and in case satisfactory proof is not given to the Judge entitling either party to judgment, he may

nonsuit the plaintiff; and the plaintiff may, before verdict in jury cases, and before judgment pronounced in other cases, insist on being nonsuited. C. S. U. C. c. 19, s. 84.

**82.** If on the day named in the summons the defendant does not appear, or sufficiently excuse his absence, or if he neglects to answer, the Judge, on proof of due service of the summons and copy of the plaintiff's account, claim or demand, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the order, verdict or judgment thereupon shall be final and absolute, and as valid as if both parties had attended; and, except in actions of tort or trespass, in case of the personal service of the summons and of detailed particulars of the plaintiff's claim, the Judge may, in his discretion, give judgment without further proof. C. S. U. C. c. 19, s. 85.

Proceedings in case defendant does not appear.

**83.** In case the Judge thinks it conducive to the ends of justice, he may adjourn the hearing of any cause in order to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable such party to enter more fully into his case or defence, or for any other cause which the Judge thinks reasonable, upon such conditions as to the payment of costs and admission of evidence or other equitable terms, as to him seems meet. C. S. U. C. c. 19, s. 86.

Judge may adjourn hearing of cause.

**84.** Any person may appear at the trial or hearing of any cause, matter or proceeding as agent and advocate for any party to any such cause, matter or proceeding in the Division Courts. 35 V. c. 8, s. 1.

All persons empowered to act as agents or advocates in Division Courts.

**85.** The Judge or acting Judge may, wherever in his opinion justice appears to require it, prevent any person from appearing at the trial or hearing of any cause, matter or proceeding in the said Court, as agent and advocate for any party or parties to any such cause, matter or proceeding. 35 V. c. 8, s. 2.

Judge may prevent any one from acting as agent or advocate in certain cases.

#### *Tender or Payment of Money into Court.*

**86.** If the defendant in any action of debt or contract brought against him in any Division Court, desires to plead a tender before action brought, of a sum of money in full satisfaction of the plaintiff's claim, he may do so on filing his plea with the Clerk of the Court before which he is summoned to appear, at least six days before the day appointed for the trial of the cause, and at the same time paying into Court the amount of the money mentioned in such plea; and notice of such plea and payment shall be forthwith communicated by the Clerk of the said Court to the plaintiff by post (on receiving the necessary postage), or by sending the same to his usual place of abode or business. C. S. U. C. c. 19, s. 87.

Plea of tender and payment of money into Court.

**87.** The said sum of money shall be paid to the plaintiff, less one dollar, to be paid over to the defendant for his trouble.

Amount to be paid to plaintiff, &c.

in case the plaintiff does not further prosecute his suit ; and all proceedings in the said action shall be stayed, unless the plaintiff, within three days after the receipt of notice of such payment, signifies to the Clerk of the said Court his intention to proceed for his demand, notwithstanding such plea ; and in such case the action shall proceed accordingly. C. S. U. C. c. 19, s. 88.

The rule as to costs in such cases.

**88.** If the decision thereon be for the defendant, the plaintiff shall pay the defendant his costs, charges and expenses, to be awarded by the Court, and the amount thereof may be paid over to him out of the money so paid in with the said plea, or may be recovered from the plaintiff in the same manner as any other money payable under a judgment of the said Court ; but, if the decision be in favour of the plaintiff, the full amount of the money paid into Court as aforesaid shall be applied to the satisfaction of his claim, and a judgment may be pronounced against the defendant for the balance due and the costs of suit according to the usual practice of the Court in other cases. C. S. U. C. c. 19, s. 89.

Defendant may pay money into Court.

**89.** The defendant may at any time, not less than six days before the day appointed for the trial, pay into Court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment C. S. U. C. c. 19, s. 90.

Clerk to give notice of payment into Court.

**90.** The Clerk having received the necessary postage, shall forthwith send notice of such payment to the plaintiff by post or otherwise to his usual place of abode or of business, and the sum so paid shall be paid to the plaintiff, and all proceedings in the action stayed, unless within three days after the receipt of the notice, the plaintiff signifies to the Clerk his intention to proceed for the remainder of the demand claimed, in which case the action shall proceed as if brought originally for such remainder only. C. S. U. C. c. 19, s. 91.

Plaintiff to pay defendant's costs if no further sum recovered.

**91.** If the plaintiff recovers no further sum in the action than the sum paid into Court, the plaintiff shall pay the defendant all costs, charges and expenses incurred by him in the action after such payment, and such costs, charges and expenses shall be duly taxed, and may be recovered by the defendant by the same means as any other sum ordered to be paid by the Court. C. S. U. C. c. 19, s. 92.

#### *Set-off and Statutory Defences.*

Defendant to give notice of set-off or other statutory defence.

**92.** In case the defendant desires to avail himself of the law of set-off, or of the Statute of Limitations, or of any defence under any other statute having force of law in Ontario, he shall, at least six days before the trial or hearing, give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode if within the Division, or, if living without the Division, shall deliver the same to the Clerk of the Court in

which the action is to be tried ; and in case of a set-off, the particulars thereof shall be delivered to the Clerk and shall accompany the notice to be given as aforesaid to the plaintiff. C. S. U. C. c. 19, ss. 35 & 93 ; 39 V. c. 15, s. 1.

**93.** No evidence of set-off shall be given by the defendant except such as is contained in the particulars of set-off delivered. C. S. U. C. c. 19, s. 94. No evidence of set-off allowed.

**94.** If the set-off proved to the satisfaction of the Judge exceeds the amount shewn to be due to the plaintiff, the plaintiff shall be non-suited, or, in the election of the defendant, judgment may be given for the defendant, in which latter case such set-off shall be thereby satisfied only to the amount found due the plaintiff, and no further ; and the Judge, in such case, may adjudicate that a specified amount of such set-off be satisfied by such claim of the plaintiff ; but such adjudication shall be no bar to the recovery of the residue of such set-off. 32 V. c. 23, s. 17 ; 39 V. c. 15, s. 1. If set-off exceeds amount due plaintiff.

#### WITNESSES AND EVIDENCE.

##### *Subpœnas.*

**95.** Any of the parties to a suit may obtain, from the Clerk of any Division Court in the County, a subpœna with or without a clause for the production of books, papers and writings, requiring any witness, resident within the County or served with the subpœna therein, to attend at a specified Court or place before the Judge, or any arbitrator appointed by him under the provision hereinafter contained, and the Clerk, when requested by any party to a suit, or his agent, shall give copies of such subpœna. C. S. U. C. c. 19, s. 97. Parties may obtain subpœnas from Clerk.

**96.** Any number of names may be inserted in a subpœna, and service thereof may be made by any literate person, and proof of the due service thereof, together with the tender or payment of expenses, may be made by affidavit, and proof of service may be received by the Judge, either orally or by affidavit. C. S. U. C. c. 19, s. 98. Services of subpœna, by whom made.

**97.** Every person served with a copy of a subpœna either personally or at his usual place of abode, and to whom at the same time a tender of payment of his lawful expenses is made, who refuses or neglects without sufficient cause to obey the subpœna, and also every person in Court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence, shall pay such fine not exceeding eight dollars as the Judge may impose, and shall, by verbal or written order of the Judge, be, in addition, liable to imprisonment for any time not exceeding ten days ; and such fine shall be levied and collected with costs, in the same manner as fines imposed on jurymen for non-attendance, and the whole Penalty for disobeying subpœna or refusing to be sworn.



or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the Consolidated Revenue Fund. C. S. U. C. c. 19, s. 99.

Parties may obtain subpoenas from Superior Courts.

**98.** Any party may obtain from either of the Superior Courts of Law, a subpoena requiring the attendance at the Division Court, and at the time mentioned in such subpoena, of a witness residing or served with such subpoena in any part of Ontario; and the witness shall obey such subpoena, provided the allowance for his expenses, according to the scale settled in the said Superior Courts, be tendered to him at the time of service. C. S. U. C. c. 19, s. 100.

### *Commissions to take Evidence.*

Power to issue commissions to take evidence.

**99.** In case the plaintiff or defendant in any suit in any Division Court is desirous of having at the trial thereof the testimony of any person or persons residing without the limits of the Province, the Judge of the County Court of the County wherein such suit is pending, may, upon the application of such plaintiff or defendant, and upon hearing the parties, order the issue of a commission or commissions out of and under the seal of such County Court to a commissioner or commissioners to take the examination of such person or persons respectively. 39 V. c. 15, s. 3.

No commission to take evidence of the person applying, unless, &c.

**100.** No order shall be made for the issue of any such commission, for the taking of the evidence of the person applying therefor, or any person in his employment, unless in the opinion of the Judge, a saving of expense will be caused thereby, or unless it is clearly made to appear that such person or persons are aged or infirm, or otherwise unable from sickness to appear as a witness or witnesses. 39 V. c. 15, s. 3.

Rev. Stat. c. 62 ss. 22 and 23 made applicable to commissions.

**101.** The provisions of sections twenty-two and twenty-three of "The Evidence Act" so far as the same are applicable shall apply to every commission issued under the authority of this Act. 39 V. c. 15, s. 4.

Commission, &c., to be returned to Division Court Clerk by County Court Clerk.

**102.** The commission, when returned, shall with the evidence taken thereunder, and the papers returned therewith by the commissioner, be forthwith transmitted by the Clerk of the County Court to the Clerk of the Division Court in which the suit to which the same relates is pending. 39 V. c. 15, s. 5.

Costs of commission.

**103.** The costs of and attending the application for the issue, execution, return and transmission of any such commission shall be in the discretion of the Court in which the suit is pending, and shall be taxed on the County Court scale by the Clerk of the County Court out of which the same issued on notice

to all parties interested, and the Clerk shall certify the result of such taxation accompanied by a copy of the bill of costs as taxed, to the Clerk of the Division Court in which the suit is pending; and such costs may be added to any other costs to be paid to the party entitled thereto, and may be recovered by the party entitled thereto in like manner as the ordinary costs of the suit are recoverable by the practice of the Division Courts. 39 V. c. 15, s. 6.

*Books of Account, Affidavits, &c. as evidence.*

**104.** In any suit for a debt or demand, not being for tort, and not exceeding twenty dollars, the Judge, on being satisfied of their general correctness, may receive the plaintiff's books as evidence, or in case of a defence of set-off or of payment, so far as the same extends to twenty dollars, may receive the defendant's books as evidence, and such Judge may also receive as evidence the affidavit or affirmation of any party or witness in the suit resident without the limits of his County, but, before pronouncing judgment, the Judge may require any such witness or any party in a cause to answer upon oath or affirmation any interrogatories that may be filed in the suit. C. S. U. C. c. 19, s. 103.

**105.** All affidavits to be used in any of the Division Courts or before any of the Judges thereof, may be sworn before any County Judge or before the Clerk or Deputy Clerk of any Division Court, or before any Judge, or Commissioner for taking affidavits in any of the Superior Courts. C. S. U. C. c. 19, s. 104.

*Affidavits may be sworn before Judge, Clerk or Commissioner.*

JUDGE'S DECISION.

**106.** The Judge, in any case heard before him, shall, openly in Court and as soon as may be after the hearing, pronounce his decision; but if he is not prepared to pronounce a decision instant, he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing at the Clerk's office; and the Clerk shall then read the decision to the parties or their agents, if present, and he shall forthwith enter the judgment, and such judgment shall be as effectual as if rendered in Court at the trial. C. S. U. C. c. 19, s. 106.

*Judge may give judgment instant, or postpone judgment.*

**107.** The Judge may order the time or times and the proportions in which any sum and costs recovered by judgment of the Court shall be paid, reference being had to the day in which the summons was served, and at the request of the party entitled thereto, he may order the same to be paid into Court, and the Judge, upon the application of either party, within fourteen days after the trial, and upon good grounds being shown, may grant a new trial upon such terms as he thinks reasonable, and in the meantime may stay proceedings. C. S. U. C. c. 19, s. 107.

*Judge may direct times and proportions in which judgment shall be paid.*

Execution not to be postponed for more than 50 days.

**108.** Except in cases where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same, but in case it at any time appears to the satisfaction of the Judge, by affidavit, affirmation or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof, ordered to be paid as aforesaid, the Judge may suspend or stay any judgment, order or execution given, made or issued in such action, for such time and on such terms as he thinks fit, and so from time to time until it appears by the like proof that such temporary cause of disability has ceased. C. S. U. C. c. 19, s. 108.

#### JURY CASES.

When a jury may be had.

**109.** Either party may require a jury, in actions of tort where the amount sought to be recovered exceeds ten dollars, and in all other actions where such amount exceeds twenty dollars. C. S. U. C. c. 19, s. 119.

Parties to give notice to Clerk if they require a jury.

**110.** In case the plaintiff requires a jury to be summoned to try the action, he shall give notice thereof in writing to the Clerk at the time of entering his account, demand or claim, and shall at the same time pay to the Clerk the proper fees for the expenses of such jury; and in case the defendant requires a jury, he shall, within five days after the day of service of the summons on him, give to the Clerk or leave at his office the like notice in writing, and shall at the same time pay the proper fees as aforesaid; and thereupon, in either of such cases, a jury shall be summoned according to the provisions hereinafter contained. C. S. U. C. c. 19, s. 120.

Who may be jurors.

**111.** All male persons being subjects of Her Majesty by birth or naturalization, between the ages of twenty-one and sixty years, assessed upon the Collector's roll, and resident in the several Divisions respectively, shall be jurors for the Division Courts in such Divisions. C. S. U. C. c. 19, s. 121.

Jurors, how selected and summoned.

**112.** The jurors to be summoned to serve at any Division Court shall be taken from the Collector's rolls of the preceding year, for the Townships and places wholly or partly within the Division, and shall be summoned in rotation, beginning with the first of such persons on such roll; and if there be more than one such Township or place within the Division, beginning with the roll for that within which the Court is held, and then proceeding to that one of the other rolls which contains the greatest number of such persons' names, and so on until all the rolls have been gone through; after which, if necessary, they may be again gone through wholly or partly in the same order, and so on *toties quoties*. C. S. U. C. c. 19, s. 122.

**113.** For the purposes of the last preceding section, the Collector for each place wholly or partly within any Division, shall furnish the Clerk of the Division Court thereof with correct lists of the names of all persons liable to serve as jurors at such Court in the order in which they stand upon the rolls. C. S. U. C. c. 19, s. 123.

Collector to furnish Clerk with list of jurors.

**114.** The Clerk of each Division Court shall cause not less than fifteen of the persons liable to serve as jurors to be summoned to attend at each session of the Court at the time and place to be mentioned in the summons, and such summons shall be served at least three days before the Court, either personally, or by leaving the same with a grown-up person at the residence of the juror. C. S. U. C. c. 19, s. 124.

Jurors to be summoned for each Court.

**115.** Either of the parties to a cause shall be entitled to his lawful challenge against any of the jurors in like manner as in other Courts. C. S. U. C. c. 19, s. 125.

Parties entitled to challenge.

**116.** Any juryman who, after being duly summoned for that purpose, wilfully neglects or refuses to attend the Court in obedience to the summons, shall be liable to a fine in the discretion of the Judge, not exceeding four dollars, which fine shall be levied and collected with costs, by the same process as any debt or judgment recovered in the said Court, and shall form part of the Consolidated Revenue Fund. C. S. U. C. c. 19, s. 126.

Penalty on jurors disobeying summons.

**117.** Service as a juror at any Division Court shall not exempt such juror from serving as a juror in any Court of Record or in the Court of Chancery; and no person shall be compelled to serve as a juror in any Division Court who is by law exempted from serving as a petit juror in the Superior Courts. C. S. U. C. c. 19, s. 127.

Service as juror at Division Court not to exempt him from serving at Superior Courts.

**118.** If any Collector, for six days after demand made in writing, neglects or refuses to furnish the Clerk of the Division in which the Township, Town, City or Ward for which he is a Collector is wholly or in part situate, with a correct list of the names of persons liable to serve as jurors in the Division Court, according to the provisions of the one hundred and eleventh section of this Act, the Clerk may issue a summons to be personally served on the said Collector three days at least before the sitting of the Court, requiring him to appear at the then next sitting of the Court, to show cause why he refused or neglected to comply with the provisions of the said section. C. S. U. C. c. 19, s. 128.

Proceedings against Collector neglecting to furnish Clerk with list of jurors.

**119.** Upon proof of the service of such summons, the Judge may, in a summary manner, inquire into the neglect or refusal, or may give further time, and may impose such fine upon the Collector, not exceeding twenty dollars, as he deems just, and may also make such order for the payment by the Collector of

Judge may fine Collector for breach of duty.



Judge's order  
for payment  
by Collector,  
how enforced.

the costs of the proceedings as to the said Judge seems meet; and all orders made by the Judge for the payment of a fine or costs shall be enforced against the Collector by such means as are provided for enforcing judgments in the Division Courts. C. S. U. C. c. 19, s. 129.

Judge's list  
and Jury list

**120.** The causes to be heard by the Judge alone shall be set down for hearing in a separate list from the list of causes to be tried by a jury, which two lists shall be severally called "The Judge's List" and "The Jury List," and the causes shall be set down in such lists in the order in which they were in the first instance entered with the Clerk;—"The Jury List" shall be first disposed of, and then "The Judge's List;" except where the Judge sees sufficient cause for proceeding differently. C. S. U. C. c. 19, s. 130.

Five jurors to  
be empanel-  
led, &c.

**121.** Five jurors shall be empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and the verdict of every jury shall be unanimous. C. S. U. C. c. 19, s. 131.

Verdict to be  
unanimous.

Judge may  
order jury to  
be empanel-  
led to try any  
disputed fact.

**122.** In case the Judge before whom a suit is brought thinks it proper to have any fact controverted in the cause tried by a jury, the Clerk shall instantly return a jury of five persons present, to try such fact, and the Judge may give judgment on the verdict of the jury, or may grant a new trial on the application of either party, in the same way and under similar circumstances as new trials are granted in other cases on verdicts of juries. C. S. U. C. c. 19, s. 132.

Judge may  
discharge jury  
not agreeing,  
&c.

**123.** If in any case the Judge is satisfied that a jury, after having been out a reasonable time, cannot agree upon their verdict, he may discharge them, and adjourn the cause until the next Court, and order the Clerk to summon a new jury for the next sitting of the Court for that Division, unless the parties consent that the Judge may render judgment on the evidence already taken, in which case he may give judgment accordingly. C. S. U. C. c. 19, s. 133.

#### PROCEEDINGS TO GARNISH DEBTS.

To garnish  
debts.

**124.** Subject to the provisions of the next section, when any debt or money demand of the proper competence of the Division Court, and not being a claim strictly for damages, is due and owing to any party from any other party, either on a judgment of any Division Court or otherwise, and any debt is due or owing to the debtor from any other party, the party to whom such first mentioned debt or money demand is so due and owing (hereinafter designated the primary creditor), may attach and recover, in the manner herein provided, any debt due or owing to his debtor (hereinafter designated the primary

debtor), from any other party (hereinafter designated the garnishee), or sufficient thereof to satisfy the claim of the primary creditor, subject always to the rights of other parties to the debts owing from such garnishee. 32 V. c. 23, s. 5.

**125.** No debt due or accruing to a mechanic, workman, labourer, servant, clerk, or employee for, or in respect of, his wages or salary, shall be liable to seizure or attachment under this Act, unless such debt exceeds the sum of twenty-five dollars, and then only to the extent of such excess. 37 V. c. 13, s. 1.

Debts due to mechanics, &c. for wages not to be attached, except to excess over \$25.

**126.** Nothing in the next preceding section contained shall affect or impair the right or remedies of any creditor whose debt has been contracted before the first day of October, 1874. 37 V. c. 13, s. 2.

Saving clause as to debts created before 1st Oct., 1874.

*Where the Creditor's Claim is a Judgment.*

**127.** After judgment has been recovered in a Division Court, application may be made to a Judge of such Court, by or on behalf of the primary creditor, on affidavit that such judgment was recovered, and when, and that the whole, or some part, and how much, thereof remains unsatisfied, and that the deponent has reason to believe, and does believe, that some one or more parties (naming them, or stating that he is unable to name them) is or are within this Province, and is or are indebted to the primary debtor, for an attaching order (which such Judge is hereby authorized to make), to the effect that all debts owing to the primary debtor, whether due or not due, be attached to satisfy such judgment; which order may be in the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts. 32 V. c. 23, s. 6 (1).

Attaching order to be granted on judgment.

**128.** The service of such order on any garnishee shall have the effect (subject to the rights of other parties) of attaching and binding in his hands all debts then owing from him to the primary debtor, or sufficient thereof to satisfy such judgment, and a payment by the garnishee into the Court, or to the primary creditor, of the debt so attached to the extent unsatisfied on such judgment, shall be a discharge to that extent of the debt owing from the garnishee to the primary debtor. 32 V. c. 23, s. 6 (2).

Service thereof to bind all debts, etc.

Garnishee may pay in his own discharge.

**129.** Any payment by the garnishee, after service on him of such order, to any one other than the primary creditor, or into Court, to satisfy the said judgment, shall to the extent of the primary creditor's claim, be void; and the garnishee shall be liable to pay the same again, to the extent of the primary creditor's claim, to satisfy his said judgment. 32 V. c. 23, s. 6 (3).

Payment to any but primary creditor void.

Primary creditor may summon garnishee, etc.

**130.** Whether any such attaching order is or is not made, the primary creditor may cause to be sued out of the Division Court for the Division in which the garnishee, or one or more of them, if there be joint garnishees, reside or carries on business, a summons in the form prescribed by the General Rules or Orders, from time to time in force, relating to Division Courts, upon or annexed to which shall be a memorandum showing the names of the parties as designated in the judgment, the date when, and the Court in which, it was recovered, and the amount unsatisfied; which summons shall be returnable either at any ordinary sittings of such Court, or at such other time and place (to be named therein) as the Judge may permit or appoint, either by a general order for the disposal of such matters or otherwise. 32 V. c. 23, s. 6 (4).

How to be served, etc.

**131.** A copy of such summons and memorandum shall be duly served on the garnishee, or, if there be joint garnishees, then on such of them as are within reach of the process, at the time and in the manner required for the service of summonses in ordinary suits for corresponding amounts, and also on the primary debtor, if thought advisable, or if required by the Judge. 32 V. c. 23, s. 6 (5).

Judgment at hearing.

**132.** At the hearing of the summons, or at any adjourned hearing, on sufficient proof of the amount owing by the garnishee to the primary debtor, and no sufficient cause appearing why it should not be paid and applied in satisfaction of the judgment, the Judge may give judgment against the garnishee (which judgment may be in the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts), for the amount so owing from him, or sufficient thereof to satisfy the judgment; and execution against the garnishee to levy the same, may issue thereon as of course, if due, or when and as it becomes due, or at such later period as the Judge may order, which execution may be according to the form prescribed as aforesaid. 32 V. c. 23, s. 6 (6).

*Where the Primary Creditor's Claim not a Judgment.*

Where no judgment, summons on garnishee, &c. to issue.

**133.** Where judgment has not been recovered for the claim of the primary creditor, he may cause a summons to be issued out of the Division Court of the Division in which the garnishee, or one or more of them, if there be joint garnishees, live or carry on business, in the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts upon or annexed to which shall be a memorandum, showing the names of the primary creditor, the primary debtor, and of the garnishee, and the particulars of the claim of the primary creditor, with reasonable certainty and detail; which summons shall be returnable as required by section one hundred and thirty, of this Act, in respect to the summonses therein mentioned. 32 V. c. 23, s. 7 (1).

**134.** A copy of such summons and memorandum shall be duly served on the garnishee, or if there be joint garnishees, then on such of them as are within reach of the process, at the time and in the manner required for service in ordinary cases; and also, if practicable, on the primary debtor, unless the Judge for sufficient reason, dispenses therewith. 32 V. c. 23, s. 7 (2). Service thereof.

**135.** If in such case the primary debtor has been duly served with a copy of such summons and memorandum, judgment (in the usual form in other cases) may be given against him at the hearing for the primary creditor, for the whole, or such part of the claim as is sufficiently proved, and execution may afterwards issue thereon as in other cases; and whether such judgment is or is not given, the Judge, on sufficient proof of the debt due and owing from the primary debtor, and also of the amount owing to him from the garnishee, may then, or at any adjourned hearing, give judgment against the garnishee (which may be according to the form prescribed as aforesaid) for the amount so found due from the garnishee, to the extent of the amount so found due from the primary debtor, which sum the garnishee shall pay into Court, or to the primary creditor, towards the satisfaction of such claim, or in default thereof, execution may issue to levy the same forthwith, or at such later period as the Judge may direct, which execution may be according to the form prescribed as aforesaid. 32 V. c. 23, s. 7 (3). Judgment in such case.

*General Provisions.*

**136.** In all cases under this Act, and whether the claim of the primary creditor is or is not a judgment, the primary debtor, the garnishee, and all other parties in any way interested in, or to be affected by, the proceeding, shall be entitled to set up any defence, as between the primary creditor and the primary debtor, which the latter would be entitled to set up in an ordinary suit, and also any such defence as between the garnishee and the primary debtor, and may also show any other just cause why the debt sought to be garnished should not be paid over or applied in or towards the satisfaction of the claim of the primary creditor. All parties interested may show cause, etc.

2. Notice of any statutory defence shall be given to the primary creditor at the time and in the manner required in respect to such notice in ordinary cases. 32 V. c. 23, s. 8. Notice of statutory defence.

**137.** In all cases under this Act, (except where an attaching order has been served, already provided for), service of the summons on the garnishee shall have the effect of attaching and binding in his hands (subject to the rights of other parties), the debt sought to be garnished, from the time of such service until a final decision made on the hearing of such summons; and any payment of such debt by the garnishee during such period, to any one other than the primary creditor, or into Court for sat- Service of summons on garnishee to bind debt until hearing.



isfying his claim shall, to the extent of such claim, be void, and the garnishee shall be liable to pay the same again to the extent of such claim, to satisfy the same, unless the Judge otherwise orders. 32 V. c. 23, s. 9.

and after judgment.

**138.** If judgment be given for the primary creditor against the garnishee, the debt garnished shall, unless the Judge otherwise orders, continue bound in the hands of the garnishee to satisfy the claim of the primary creditor; and payment in such case by the garnishee of such debt to the extent of such claim, either into Court or to the primary creditor, shall, to that extent, be a discharge to the garnishee, as between him and the primary debtor; and any payment thereof, otherwise than last aforesaid, except by leave of the Judge, shall be void; and the garnishee in such case shall be liable to pay the same again to satisfy the claim of the primary creditor. 32 V. c. 23, s. 10.

Costs.

**139.** The garnishee shall not be liable for the costs of the proceeding, unless and in so far only as occasioned by setting up a defence, which he knew, or ought to have known, was untenable; and, subject to this provision, the costs of all parties shall be in the discretion of the Judge. 32 V. c. 23, s. 11.

Summons and memorandum of particulars to be filed.

**140.** Judgment shall not be given either against the primary debtor or the garnishee until the said summons and memorandum, with an affidavit of the due service of both on the proper parties, are filed, unless the Judge for special reasons orders otherwise. 32 V. c. 23, s. 12.

No execution, till garnishee's debt due.

**141.** No execution shall in any case issue to levy the money owing from any garnishee until, and so far only as such money has become fully due. 32 V. c. 23, s. 13.

Application to discharge debt from attachment.

**142.** Any party entitled to or interested in any money or debt attached or bound in the hands of the garnishee by a proceeding under this Act, may, at any time before actual payment thereof by the garnishee, apply to the Judge for an order (which the Judge is hereby authorized to make), to the effect that such money or debt be discharged from the claim of the primary creditor; and thenceforth such money or debt shall cease to be attached or bound for such claim; and such an application and such an order may also be made, if the Judge thinks fit, after such money or debt has been paid over by the garnishee, in which case all parties shall be remitted to their original rights in respect thereto, except as against the garnishee having already paid such debt or money, whose payment shall not be affected thereby, but shall be and remain an effectual discharge to him. 32 V. c. 23, s. 14.

Security from primary creditor.

**143.** If the Judge, on the hearing of any summons under this Act, or on special application for the purpose, thinks

proper, he may, before giving judgment against the garnishee, or at any time before actual payment by the garnishee, order such security to be given as may be approved by himself or the Clerk, by or on behalf of the primary creditor, for the repayment into Court to abide the Judge's order, in case a Judge's order is made for such repayment;

2. Such bond shall be to the Clerk by his name of office, and shall enure for the benefit of all parties interested in or entitled to the money, and may by order of the Judge, and on such terms as to indemnity against costs and otherwise as he may impose, be sued in the name of the Clerk of the Court for the time being, for the benefit of the party entitled. 32 V. c. 23, s. 15 (1).

**144.** In case any one other than the primary creditor or primary debtor claims to be entitled to the debt owing from the garnishee, by assignment thereof or otherwise, the Judge, when adjudicating in any of the cases aforesaid, or by calling the proper parties before him by summons for the purpose, may enquire into and decide upon such claim, and may allow or give effect to it, or may hold it void as against the primary creditor for being a fraud upon creditors, or otherwise, as the justice of the case may require; and for such purpose he may require the attendance of such parties and such witnesses (their conduct money being first paid) as he may think necessary. 32 V. c. 23, s. 15 (2). Cases of adverse claims.

**145.** The Judge may postpone or adjourn from time to time, the hearing and other proceedings in all garnishee cases, to allow time for giving omitted notices of defence, or to produce further evidence, or for any other purpose; and may require service on, and notice to, other or additional parties, and may prescribe and devise forms for any proceeding, and may amend all summonses, memoranda, claims, accounts, notices and other papers and proceedings, and copies thereof, as justice may require. 32 V. c. 23, s. 16. Judge may postpone or adjourn proceedings.

**146.** The Clerks of the several Division Courts shall keep in their respective offices a Debt Attachment Book, according to the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts, in which shall be correctly entered the names of parties, the dates, statements, amounts and other proceedings under this Act, as indicated by the said form, and copies of any entries made therein may be taken by any one on application free of charge. 32 V. c. 23, s. 20. Debt attachment book.

#### ARBITRATION.

**147.** The Judge may, in any case, with the consent of both parties to the suit, or of their agents, order the same, with or without other matters in dispute between such parties, being within the jurisdiction of the Court, to be referred to arbitra- Judge may order cause to be referred to arbitration.

tion to such person or persons, and in such manner and on such terms as he thinks reasonable and just. C. S. U. C. c. 19, s. 109

Only revocable  
with Judge's  
assent.

**148.** Such reference shall not be revocable by either party, except with the consent of the Judge. C. S. U. C. c. 19, s. 110.

Award to be  
entered as  
judgment.

**149.** The award of the Arbitrator or Arbitrators or Umpire shall be entered as the judgment in the cause, and shall be as binding and effectual as if given by the Judge. C. S. U. C. c. 19, s. 111.

Judge may set  
aside award.

**150.** The Judge, on application to him within fourteen days after the entry of such award, may, if he thinks fit, set aside the award, or may, with the consent of both parties, revoke the reference and order another reference to be made in the manner aforesaid. C. S. U. C. c. 19, s. 112.

Arbitrators  
may also ad-  
minister oaths.

**151.** Any of such Arbitrators may administer an oath or affirmation to the parties, and to all other persons examined before such arbitrator. C. S. U. C. c. 19, s. 113.

#### CONFESSIONS OF DEBT.

Clerks and  
Bailiffs may  
take confes-  
sions.

**152.** Any Bailiff or Clerk, before or after suit commenced, may take a confession or acknowledgment of debt from any debtor or defendant desirous of executing the same, which confession or acknowledgment shall be in writing and witnessed by the Bailiff or Clerk at the time of the taking thereof; and upon the production of such confession or acknowledgment to the Judge, and its being proved by the oath of such Bailiff or Clerk, judgment may be entered thereon. C. S. U. C. c. 19, s. 117.

Affidavit re-  
quired in such  
cases.

**153.** Such oath or affidavit shall state that the party making it has not received, and that he will not receive, anything from the plaintiff or defendant, or any other person, except his lawful fees, for taking such confession or acknowledgment, and that he has no interest in the demand sought to be recovered. C. S. U. C. c. 19, s. 118.

#### COSTS.

Judge may ap-  
portion costs.

**154.** The costs of any action or proceeding not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge thinks fit, and in cases where the plaintiff does not appear in person or by some person on his behalf, or appearing does not make proof of his demand to the satisfaction of the Judge, he may award to the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance as he thinks proper, to be recovered as provided for in other cases under this Act, and in default of any special direction, the costs shall abide the event of the action, and execution may issue for the recovery thereof

in like manner as for any debt adjudged in the Court. C. S. U. C. c. 19, s. 114.

PROCEEDINGS NOT TO BE SET ASIDE FOR MATTER OF FORM.

**155.** No order, verdict, judgment, or other proceeding had or made concerning any matter or thing under this Act, shall be quashed or vacated for any matter of form. C. S. U. C. c. 19, s. 191.

Judgments not to be reversed for want of form.

JUDGMENT AND EXECUTION.

**156.** In case the Judge makes an order for the payment of money, and in case of default of payment of the whole or of any part thereof, the party in whose favour such order has been made, may sue out execution against the goods and chattels of the party in default; and thereupon the Clerk, at the request of the party prosecuting the order, shall issue under the seal of the Court a *fi. fieri facias* to one of the Bailiffs of the Court, who by virtue thereof shall levy by distress and sale of the goods and chattels of such party, being within the County within which the Court was holden, such sum of money and costs (together with interest thereon from the date of the entry of the judgment) as have been so ordered, and remain due, and shall pay the same over to the said Clerk. C. S. U. C. c. 19, s. 135.

Where money not paid, pursuant to order, execution to issue.

**157.** If there are cross-judgments between the parties, the party only who has obtained judgment for the larger sum shall have execution, and then only for the balance over the smaller judgment, and satisfaction for the remainder and also satisfaction on the judgment for the smaller sum shall be entered; and if both sums are equal, satisfaction shall be entered upon both judgments. C. S. U. C. c. 19, s. 134.

Cross-judgments may be set off.

**158.** Except in cases brought under the sixty-third section of this Act, no writ in the nature of a writ of *fi. fieri facias* or attachment shall be executed out of the limits of the County over which the Judge of the Court from which such writ issues has jurisdiction. C. S. U. C. c. 19, s. 136.

Writs of *fi. fa.* where to be executed.

**159.** In case any party against whom a judgment has been entered up removes to another County without satisfying the judgment, the County Judge of the County to which such party has removed may, upon the production of a copy of the judgment duly certified by the Judge of the County in which the judgment has been entered, order an execution for the debt and costs, awarded by the judgment, to issue against such party. C. S. U. C. c. 19, s. 137.

If party removes to another County, execution obtainable in such County.

**160.** If the party against whom an execution has been awarded, pays or tenders to the Clerk or Bailiff of the Division Court out of which the execution issued, before an actual sale of his goods and chattels, such sum of money as aforesaid, or

If party, before sale, pays to Clerk or Bailiff of Court out of



which execution issued, execution to be superseded.

such part thereof as the party in whose favour the execution has been awarded agrees to accept in full of his debt, together with the fees to be levied, the execution shall thereupon be superseded, and the goods be released and restored to such party. C. S. U. C. c. 19, s. 138.

Clerk of any Court in which judgment entered to prepare transcript thereof, to transmit to any other Division Court.

**161.** The Clerk of any Division Court shall, upon the application of any plaintiff or defendant, (or his agent,) having an unsatisfied judgment in his favour in such Court, prepare a transcript of the entry of such judgment, and shall send the same to the Clerk of any other Division Court, whether in the same or any other County, with a certificate at the foot thereof signed by the Clerk who gives the same, and sealed with the seal of the Court of which he is Clerk, and addressed to the Clerk of the Court to whom it is intended to be delivered, and stating the amount unpaid upon such judgment and the date at which the same was recovered; and the Clerk to whom such certificate is addressed shall, on the receipt of such transcript and certificate, enter the transcript in a book to be kept in his office for the purpose, and the amount due on the judgment according to the certificate; and all proceedings may be taken for the enforcing and collecting the judgment in such last mentioned Division Court, by the officers thereof, that could be had or taken for the like purpose upon judgments recovered in any Division Court. C. S. U. C. c. 19, s. 139; 32 V. c. 23, s. 25.

Revival of judgment in case of death of party to judgment.

**162.** In case of the death of either or both of the parties to a judgment in any Division Court, the party in whose favour the judgment has been entered, or his personal representative in case of his death, may revive such judgment against the other party, or his personal representative in case of his death, and may issue execution thereon in conformity with any Rules which apply to such Division Court in that behalf. C. S. U. C. c. 19, s. 140.

Execution, when dated and returnable.

**163.** Every execution shall be dated on the day of its issue, and shall be returnable within thirty days from the date thereof, but may, from time to time, be renewed by the Clerk, at the instance of the execution creditor, for thirty days from the date of such renewal, in the same manner and with the same effect as like writs from the Courts of Record may be renewed under the provisions of *The Act respecting Writs of Execution*. C. S. U. C. c. 19, s. 141; 32 V. c. 23, s. 24.

Rev. Stat. c. 66.

Judge may order an execution to issue before regular day.

**164.** In case the Judge is satisfied upon application on oath made to him by the party in whose favour a judgment has been given, or is satisfied by other testimony that such party will be in danger of losing the amount of the judgment, if compelled to wait till the day appointed for the payment thereof before any execution can issue, such Judge may order an execution to issue at such time as he thinks fit. C. S. U. C. c. 19, s. 158.

**165.** In case an execution is returned *nulla bona*, and the sum remaining unsatisfied on the judgment under which the execution issued amounts to the sum of forty dollars, the plaintiff or defendant may obtain a transcript of the judgment from the Clerk, under his hand and sealed with the seal of the Court, which transcript shall set forth,

If execution returned *nulla bona*, parties may obtain transcript.

1. The proceedings in the cause ;
2. The date of issuing execution against goods and chattels ; and
3. The Bailiff's return of *nulla bona* thereon, as to the whole or a part. C. S. U. C. c. 19, s. 142.

**166.** Upon filing such transcript in the office of the Clerk of the County Court, in the County where such judgment has been obtained, or in the County wherein the defendant's or plaintiff's lands are situate, the same shall become a judgment of such County Court, and the Clerk of such County Court shall file the transcript on the day he receives the same, and enter a memorandum thereof in a book to be by him provided for that purpose, which memorandum shall contain,

Upon filing transcript in office of County Court Clerk, judgment to be judgment of that Court.

1. The names of the plaintiff and defendant ;
2. The amount of the judgment ;
3. The amount remaining unsatisfied thereon ; and
4. The date of filing ;

for which services the Clerk of the County Court shall be entitled to demand and receive from the person filing the same the sum of fifty cents. C. S. U. C. c. 19, s. 143.

**167.** Such book shall at all reasonable hours be accessible to any person desirous of examining the same, upon the payment to the Clerk of ten cents. C. S. U. C. c. 19, s. 144.

County Court Clerk's book to be accessible.

**168.** Upon such filing and entry the plaintiff or defendant may, until the judgment has been fully paid and satisfied, pursue the same remedy for the recovery thereof or of the balance due thereon, as if the judgment had been originally obtained in the County Court. C. S. U. C. c. 19, s. 145.

Parties may prosecute judgment in County Court.

**169.** On any writ, precept or warrant of execution against goods and chattels, the Sheriff or other officer to whom the same is directed may seize and sell the interest or equity of redemption in any goods or chattels of the party against whom the writ has issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure. C. S. U. C. c. 19, s. 150.

The interest of a mortgagor in goods mortgaged may be sold in execution.

What may be seized under execution against goods and chattels.

**170.** Every Bailiff or officer having an execution against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person, (except those which are by law exempt from seizure), and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to such person. C. S. U. C. c. 19, s. 151; 23 V. c. 25, s. 2.

Bailiff to hold cheques, notes, &c., seized under execution for benefit of plaintiff.

**171.** The Bailiff shall for the benefit of the plaintiff, hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money so seized or taken as aforesaid, as security for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised, and the plaintiff, when the time of payment thereof has arrived, may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby. C. S. U. C. c. 19, s. 152.

Defendant in original cause not to discharge suit.

**172.** The defendant in the original cause shall not discharge such suit in any way without the consent of the plaintiff or of the Judge. C. S. U. C. c. 19, s. 153.

The party wishing to enforce must secure costs.

**173.** The party who desires to enforce payment of any security seized or taken as aforesaid, shall first pay or secure all costs that may attend the proceeding; and the moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same to apply on the plaintiff's demand, and the overplus, if any, shall be forthwith paid to the defendant in the original suit, under the direction of the Judge. C. S. U. C. c. 19, s. 154.

Overplus.

Bailiff after seizure of goods to indorse date of seizure and give notice of sale.

**174.** The Bailiff, after seizing goods and chattels by virtue of an execution, shall endorse on such execution the date of the seizure, and shall immediately, and at least eight days before the time appointed for the sale, give public notice by advertisement signed by himself, and put up at three of the most public places in the Division where such goods and chattels have been taken, of the time and place within the Division when and where they will be exposed to sale; and the notice shall describe the goods and chattels taken. C. S. U. C. c. 19, s. 155.

Goods not to be sold till after eight days have expired after seizure.

**175.** The goods so taken shall not be sold until the expiration of eight days at least next after the seizure thereof, unless upon the request in writing under the hand of the party whose goods have been seized. C. S. U. C. c. 19, s. 156.

Bailiff and other officers not to purchase goods seized.

**176.** No Clerk, Bailiff or other officer of any Division Court shall, directly or indirectly, purchase any goods or chattels at any sale made by any Division Court Bailiff under execution,

and every such purchase shall be absolutely void. C. S. U. C. c. 19, s. 157; *See also Rev. Stat. c. 16, s. 27.*

## EXAMINATION OF JUDGMENT DEBTORS.

**177.** Any party having an unsatisfied judgment or order in any Division Court, for the payment of any debt, damages or costs, may procure from the Court wherein the judgment has been obtained, if the defendant resides or carries on his business within the County in which the Division is situate, or from any Division Court in any other County into which the judgment has been removed under the one hundred and sixty-first section of this Act and within the limits of which Division Court the defendant resides or carries on his business, a summons in the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts, and such summons may be served either personally upon the person to whom the same is directed, or by leaving a copy thereof at the house of the party to be served or at his usual or last place of abode, or with some grown person there dwelling, requiring him to appear at a time and place therein expressed, to answer such things as are therein named, and if the defendant appears in pursuance thereof, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has, of discharging the said debt, damages or liability, and as to the disposal he has made of any property. C. S. U. C. c. 19, s. 160.

Judgment debtors may be examined at the instance of their creditors.

**178.** The person obtaining such summons and all witnesses whom the Judge thinks requisite, may be examined upon oath, touching the enquiries authorized to be made as aforesaid. C. S. U. C. c. 19, s. 161.

And witnesses, &c.

**179.** The examination shall be held in the Judge's chamber, unless the Judge otherwise directs. C. S. U. C. c. 19, s. 162.

The examination to be in Judge's chamber.

**180.** The costs of such summons and of all proceedings thereon shall be deemed costs in the cause, unless the Judge otherwise directs. C. S. U. C. c. 19, s. 163.

The costs provided for.

**181.** In case a party has, after his examination, been discharged by the Judge, no further summons shall issue out of the same Division Court at the suit of the same or any other creditor, without an affidavit satisfying the Judge upon facts not before the Court upon such examination, that the party had not then made a full disclosure of his estate, effects and debts, or an affidavit satisfying the Judge that since such examination the party has acquired the means of paying. C. S. U. C. c. 19, s. 164.

Party examined and discharged not to be again summoned, except, &c.



Consequence  
of neglect or  
refusal to  
attend.

**182.** If the party so summoned—

1. Does not attend as required by the summons, or allege a sufficient reason for not attending ; or

2. If he attends and refuses to be sworn or to declare any of the things aforesaid ; or

3. If he does not make answer touching the same to the satisfaction of the Judge ; or

4. If it appears to the Judge, either by the examination of the party or by other evidence, that the party,

(a) Obtained credit from the plaintiff or incurred the debt or liability under false pretences, or by means of fraud or breach of trust, or

(b) Wilfully contracted the debt or liability without having had at the time a reasonable expectation of being able to pay or discharge the same, or

(c) Has made or caused to be made any gift, delivery or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them ; or

5. If it appears to the satisfaction of the Judge that the party had when summoned, or, since the judgment was obtained against him, has had sufficient means and ability to pay the debt or damages, or costs recovered against him, either altogether or by the instalments which the Court in which the judgment was obtained has ordered, and if he has refused or neglected to pay the same at the time ordered, whether before or after the return of the summons,

the Judge may, if he thinks fit, order such party to be committed to the Common Gaol of the County in which the party so summoned resides or carries on his business, for any period not exceeding forty days. C. S. U. C. c. 19, s. 165.

In what cases  
only the party  
summoned  
may be com-  
mitted for non-  
attendance ;  
costs allowed  
him in certain  
cases.

**183.** A party failing to attend according to the requirements of any such summons as aforesaid, shall not be liable to be committed to gaol for the default, unless the Judge is satisfied that such non attendance is wilful, or that the party has failed to attend after being twice so summoned ; and if at the hearing it appears to the Judge, upon the examination of the party or otherwise, that he ought not to have been so summoned, or if at such hearing the judgment creditor does not appear, the Judge shall award the party summoned a sum of money by way of compensation for his trouble and attendance, to be recovered against the judgment creditor in the same manner as any other judgment of the Court. C. S. U. C. c. 19, s. 166.

**184.** Wherever any order of commitment as aforesaid has been made, the Clerk of the Court shall issue, under the seal of the Court, a warrant of commitment directed to the Bailiff of any Division Court within the County, and such Bailiff may by virtue of such warrant take the person against whom the order has been made. C. S. U. C. c. 19, s. 167.

Commitment  
in case of re-  
fusal.

**185.** All constables and other peace officers within their respective jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of the gaol of the County in which such warrant has been issued, shall receive and keep the defendant therein until discharged under the provisions of this Act or otherwise by due course of law. C. S. U. C. c. 19, s. 168.

Constables,  
&c., to execute  
warrants.

**186.** Any person imprisoned under this Act, who has satisfied the debt or demand, or any instalment thereof payable, and the costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall, upon the certificate of such satisfaction, signed by the Clerk of the Court, or by leave of the Judge of the Court in which the order of imprisonment was made, be discharged out of custody. C. S. U. C. c. 19, s. 169.

When debtor  
in custody  
shall be dis-  
charged.

**187.** The Judge before whom such summons is heard may, if he thinks fit, rescind or alter any order for payment previously made against any defendant so summoned before him, and may make any further or other order, either for the payment of the whole of the debt or damages recovered and costs forthwith, or by any instalments, or in any other manner that he thinks reasonable and just. C. S. U. C. c. 19, s. 170.

Judge may  
make order  
and may alter  
and modify  
the same.

**188.** In case the defendant in any suit brought in a Division Court has been personally served with the summons to appear, or personally appears at the trial, and judgment is given against him, the Judge, at the hearing of the cause or at any adjournment thereof, may examine the defendant and the plaintiff and any other person touching the several things hereinbefore mentioned, and may commit the defendant to prison, and make an order in like manner as he might have done in case the plaintiff had obtained a summons for that purpose after judgment. C. S. U. C. c. 19, s. 171.

Parties may be  
examined,  
when.

[C. S. U. C. c. 19, s. 172, is as follows :—

**172.** No protection order or certificate granted by any Court of Bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any order of commitment as aforesaid. 13, 14 V. c. 53, s. 95, *the end.*]

Party commit-  
ted not to be  
discharged for  
insolvency.

**189.** No imprisonment under this Act shall extinguish the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being summoned anew and imprisoned for any new fraud or other default rendering

Debt not to be  
extinguished.

him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the defendant. C. S. U. C. c. 19, s. 173.

#### ABSCONDING DEBTORS.

Absconding  
debtors.

**190.** In case any person, being indebted in a sum not exceeding one hundred dollars, nor less than four dollars, for any debt or damages arising upon any contract, express or implied, or upon any judgment,

1. Absconds from this Province, leaving personal property liable to seizure under execution for debt in any County in Ontario.

2. Attempts to remove such personal property, either out of Ontario or from one County to another therein.

3. Keeps concealed in any County to avoid service of process;

and in case any creditor of such person, his servant or agent makes and produces an affidavit or affirmation to the purport of the form prescribed by the General Rules or Orders from time to time in force relating to Division Courts, and in case the said affidavit or affirmation be filed with the Clerk of any Division Court in Ontario, then such Clerk upon the application of such creditor, his servant or agent, shall issue a warrant under the hand and seal of such Clerk, in the form prescribed by such General Rules or Orders, directed to the Bailiff of the Division Court within whose Division the same is issued, or to any Constable of the County, commanding such Bailiff or Constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person within such County, liable to seizure under execution for debt, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the warrant forthwith to the Court out of which the same issued. C. S. U. C. c. 19, s. 199; 40 V. c. 7, *Sched. A* (70).

When Justice  
of the Peace  
may issue at-  
tachments, &c.

**191.** Any County Judge, or a Justice of the Peace for the County, may take the affidavit in the last preceding section mentioned, and upon the same being filed with such Judge or Justice, the Judge or Justice may issue a warrant under his hand and seal in the form prescribed as aforesaid, and such Judge or Justice shall forthwith transmit the affidavit to the Clerk of the Division Court within whose Division the same was made or taken, to be by him filed and kept among the papers in the cause. C. S. U. C. c. 19, s. 200.

Bailiff or Con-  
stable to seize  
and make in-  
ventory.

**192.** Upon receipt of such warrant by the Bailiff or Constable, and upon being paid his lawful fees, including the fees of appraisalment, such Bailiff or Constable shall forthwith

execute the warrant, and make a true inventory of all the estate and effects which he seizes and takes by virtue thereof, and shall within twenty-four hours after seizure, call to his aid two freeholders, who being first sworn by him to appraise the personal estate and effects so seized, shall then appraise the same and forthwith return the inventory attached to such appraisal to the Clerk of the Court in which the warrant is made returnable. C. S. U. C. c. 19, s. 201.

**193.** In any case commenced by attachment, in a Division Court, the proceedings may be conducted to judgment and execution in the Division Court of the Division within which the warrant of attachment issued. C. S. U. C. c. 19, s. 202.

Proceedings may be continued in Court out of which attachment issued.

**194.** Where proceedings have been commenced in any case before the issue of an attachment, such proceedings may be continued to judgment and execution in the Division Court within which the proceedings were commenced. C. S. U. C. c. 19, s. 203.

Proceedings commenced before attachment to continue.

**195.** The property seized upon any warrant of attachment shall be liable to seizure and sale under the execution to be issued upon the judgment, or in case such property was perishable, and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment. C. S. U. C. c. 19, s. 204.

Property attached may be sold under execution.

**196.** No plaintiff shall divide any cause of action into two or more suits for the purpose of bringing the same within the provisions of the preceding sections, but any plaintiff having a cause of action above the value of one hundred dollars, and not exceeding two hundred dollars, for which an attachment might be issued if the same were not above the value of one hundred dollars, may abandon the excess, and upon proving his case, may recover to an amount not exceeding one hundred dollars, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly. C. S. U. C. c. 19, s. 205.

Plaintiff not to divide cause of action.

**197.** In case several attachments issue against any party then subject to the provisions contained in the sixteenth section of *The Act respecting Absconding Debtors*, the proceeds of the goods and chattels attached shall not be paid over to the attaching creditor or creditors according to priority, but shall be rateably distributed among such of the creditors suing out such attachments as obtain judgment against the debtor, in proportion to the amount really due upon such judgments; and no distribution shall take place until reasonable time, in the opinion of the Judge, has been allowed to the several creditors to proceed to judgment. C. S. U. C. c. 19, s. 206.

If several attachments issued.

Rev. Stat. c. 68, s. 16.

**198.** Where the goods and chattels are insufficient to satisfy the claims of all the attaching creditors, no such creditor shall

If goods insufficient.



be allowed to share unless he sued out his attachment, and within one month next after the issue of the first attachment, gave notice thereof to the Clerk of the Court out of which the first attachment issued, or in which it was made returnable. C. S. U. C. c. 19, s. 207.

Clerk to take charge of goods attached.

**199.** All the property seized under the provisions of the preceding sections shall be forthwith handed over to the custody and possession of the Clerk of the Court out of which the warrant of attachment issued, or into which it was made returnable, and such Clerk shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same. C. S. U. C. c. 19, s. 208.

On what terms goods attached may be restored.

**200.** In case any person against whose estate or effects any such attachment has issued, or any person on his behalf, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out the attachment, and files in the Court to which the attachment has been returned, a bond with good and sufficient sureties, to be approved of by the Judge or Clerk, binding the obligors, jointly and severally, in double the amount claimed, with condition that the debtor (naming him) will, in the event of the claim being proved and judgment recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same, or the value of the property so taken and seized, to the claimant or claimants, or produce such property whenever thereunto required, to satisfy such judgment, such Clerk may supersede the attachment, and the property attached shall then be restored. C. S. U. C. c. 19, s. 209.

If the debtor does not appear.

**201.** If within one month from the seizure as aforesaid, the party against whom the attachment issued, or some one on his behalf, does not appear and give such bond, execution may issue as soon as judgment has been obtained upon the claim or claims, and the property seized upon the attachment, or enough thereof to satisfy the judgment and costs, may be sold for the satisfaction thereof, according to law, or if the property has been previously sold as perishable under the provisions herein-after made, enough of the proceeds thereof may be applied to satisfy the judgment and costs. C. S. U. C. c. 19, s. 210.

If summoned personally

**202.** Where the property of any person has been seized under any warrant of attachment as aforesaid, and a summons had been personally served on such person before seizure, then the trial of the cause shall be proceeded with as if no such warrant of attachment had been issued, and after judgment execution shall forthwith issue, unless otherwise ordered by the Judge. C. S. U. C. c. 19, s. 211.

Proceedings against debtors where

**203.** Subject to the provisions contained in the fourteenth and sixteenth sections of *The Act respecting Absconding Debtors*,

in order to proceed in the recovery of any debt due by the person against whose property an attachment issues, where process has not been previously served, the same may be served either personally or by leaving a copy at the last place of abode, trade or dealing of the defendant, with any person there dwelling, or by leaving the same at the said dwelling, if no person be there found; and in every case, all subsequent proceedings shall be conducted according to the usual course of practice in the Division Courts; and if it appears to the satisfaction of the Judge on the trial, upon affidavit, or other sufficient proof, that the creditor who sued out an attachment had not reasonable or probable cause for taking such proceedings, the Judge shall order that no costs be allowed to such creditor or plaintiff, and no costs in such case shall be recovered in the cause. C. S. U. C. c. 19, s 212.

process not  
previously  
served.

Rev. Stat.  
c. 68, ss. 14&16.

**201.** Subject to the provisions contained in the fourteenth and sixteenth sections of *The Act respecting Absconding Debtors*, in case any horses, cattle, sheep or other perishable goods have been taken upon an attachment, the Clerk of the Court who has the custody or keeping thereof (the same having been first appraised, in the manner in the one hundred and ninety-second section of this Act mentioned), may at the request of the plaintiff who sued out the warrant of attachment, expose and sell the same at public auction, to the highest bidder, giving at least eight days' notice at the office of the Clerk of the said Court, and at two other public places within his Division, of the time and place of such sale, if the articles seized will admit of being so long kept, otherwise he may sell the same at his discretion. C. S. U. C. c. 19, s. 213.

Perishable  
goods, how  
disposed of.

Rev. Stat.  
c. 68, ss. 14&16.

**205** It shall not be compulsory upon the Bailiff or Constable to seize, or upon the Clerk to sell such perishable goods, until the party who sued out the warrant of attachment has given a bond to the defendant therein, with good and sufficient sureties in double the amount of the appraised value of such goods, conditioned that the party directing such seizure and sale will repay the value thereof, together with all costs and damages incurred in consequence of such seizure and sale, in case judgment be not obtained for the party who sued out such attachment, and the bond shall be filed with the papers in the cause. C. S. U. C. c. 19, s. 214.

Creditor to  
give bond to  
indemnify the  
officer, and to  
be filed.

**206.** The residue, after satisfying such judgments as aforesaid, with the costs thereupon, shall be delivered to the defendant, or to his agent, or to any person in whose custody the goods were found, whereupon the responsibility of the Clerk, as respects such property, shall cease. C. S. U. C. c. 19, s. 215.

Residue, how  
disposed of.

**207** Any bond given in the course of any proceeding under this Act, may be sued in any Division Court of the County where in the same was executed, and proceedings may be there-

Bond may be  
sued in the Di-  
vision Court.

upon carried on to judgment and execution in such Court, notwithstanding the penalty contained in such bond may exceed the sum of one hundred dollars. C. S. U. C. c. 19, s. 216.

Judge may deliver up bond.

**208.** Every such bond shall be delivered up to the party entitled to the same, by the order and at the discretion of the Judge of such Court, to be enforced or cancelled, as the case may require. C. S. U. C. c. 19, s. 217.

#### CLAIMS OF LANDLORDS AND OTHERS IN RESPECT TO GOODS SEIZED.

Interpretation of the words "Landlord"

**209.** In the next six sections, the word "landlord" shall include the person entitled to the immediate reversion of the land, or, if the property be held in joint tenancy, coparcenary or tenancy in common, shall include any one of the persons entitled to such reversion; and

"Agent."

The word "agent" shall mean any person usually employed by the landlord in the letting of lands or in the collection of the rents thereof, or specially authorized to act in any particular matter by writing under the hand of such landlord. C. S. U. C. c. 19, s. 174.

Claims of landlords, &c., to goods seized in execution, how to be adjusted.

**210.** In case a claim be made to or in respect of any goods or chattels, property or security, taken in execution or attached under the process of any Division Court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process issued, then, subject to the provisions of *The Act respecting Absconding Debtors*, the Clerk of the Court, upon application of the officer charged with the execution of such process, may, whether before or after the action has been brought against such officer, issue a summons calling before the Court out of which such process issued, or before the Court holden for the Division in which the seizure under such process was made, as well the party who issued such process as the party making such claim, and thereupon any action which has been brought in any of Her Majesty's Superior Courts of Record, or in a local or inferior Court in respect of such claim, shall be stayed.

Rev. Stat. c. 68.

When actions in the Superior Courts respecting the subject matter may be stayed.

Costs.

2. The Court in which such action has been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels or property or security were so taken in execution or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Division Court.

County Judge to adjudicate upon the claim.

3. The County Judge having jurisdiction in such Division Court shall adjudicate upon the claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him seems fit, and such order shall be enforced

in like manner as an order made in any suit brought in such Division Court, and shall be final and conclusive between the parties, except that upon the application of either the attaching or execution creditor, or the claimant, within fourteen days after the trial, the Judge may grant a new trial upon good grounds shown, as in other cases under this Act, upon such terms as he thinks reasonable, and may in the meantime stay proceedings. C. S. U. C. c. 19, s. 175; 32 V. c. 23, s. 26; 40 V. c. 7, *Sched. A* (71).

**211.** So much of the Act passed in the eighth year of the reign of Queen Anne, entitled "*An Act for the better security of Rents and to prevent Frauds committed by Tenants*," as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Division Court, but the landlord of any tenement in which any such goods are so taken may, by writing under his hand or under the hand of his agent, stating the terms of holding and the rent payable for the same, and delivered to the Bailiff making the levy, claim any rent in arrear then due to him, not exceeding the rent of four weeks when the tenement has been let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent accruing due in one year. C. S. U. C. c. 19, s. 176.

Provisions in relation to rents due to landlords.

8 Anne, c. 14.

**212.** In case of any such claim being so made, the Bailiff making the levy shall distrain as well for the amount of the rent claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution has issued, and shall not sell the same, or any part thereof, until after the end of eight days at least next following after such distress made. C. S. U. C. c. 19, s. 177.

How the Bailiff is to proceed.

**213.** For every additional distress for rent in arrear, the Bailiff of the Court shall be entitled to have as the costs of the distress, instead of the fees allowed by this Act, the fees allowed by *The Act respecting Distresses for small Rents and Penalties*. C. S. U. C. c. 19, s. 178.

Fees of Bailiff in such cases.

Rev. Stat. c. 65.

**214.** If any replevin is made of the goods distrained, so much of the goods taken under the warrant of execution shall be sold as will satisfy the money and costs for which the said warrant issued, and the costs of the sale, and the surplus of such sale and the goods so distrained, shall be returned as in other cases of distress for rent and replevin thereof. C. S. U. C. c. 19, s. 179.

If replevin made.

**215.** No execution creditor under this Act shall have his debt satisfied out of the proceeds of such execution and distress, or of such execution only, where the tenant replevies, until the landlord who conforms to the provisions of this Act has been paid the rent in arrear for the periods hereinbefore mentioned. C. S. U. C. c. 19, s. 180.

When landlord's claim to rent is to be first paid.



Costs not recoverable in any action on Division Court judgment without order.

**216.** No costs shall be recoverable in any suit brought in any Court for the recovery of any sum awarded by judgment in a Division Court without the order of the Judge of the Court in which such suit is brought, on sufficient cause shown. C. S. U. C. c. 19, s. 115. See also *Rev. Stat.* c. 50, s. 344.

#### OFFENCES AND PENALTIES.

##### *Forging seal or process.*

[Section 181 of C. S. U. C. c. 19, is as follows :

Forgery of seal, process, &c.

181. Every person who forges the seal or any process of the Court, or who serves or enforces any such forged process, knowing the same to be forged, or delivers or causes to be delivered to any person any paper falsely purporting to be a copy of a process of the Court, knowing the same to be false, or who knowingly acts or professes to act under any false colour of process of the Court, shall be guilty of felony. 13, 14 V. c. 53, s. 86.]

##### *Contempt of Court.*

Contempt of Court.

**217.** If any person wilfully insults the Judge or acting Judge or any officer of any Division Court during his sitting or attendance in Court, or interrupts the proceedings of the Court, any Bailiff or officer of the Court may, by order of the Judge, take the offender into custody, and the Judge may impose upon the offender a fine not exceeding twenty dollars, and in default of immediate payment thereof, the Judge may by warrant under his hand and seal commit the offender to the Common Gaol of the County for any period not exceeding one month, unless such fine and costs, with the expense attending the commitment, are sooner paid. C. S. U. C. c. 19, s. 182.

##### *Resisting Officers.*

[Section 184 of C. S. U. C., c. 19, is as follows :—

If Bailiff assaulted.

184. If any officer or Bailiff (or his deputy or assistant) be assaulted while in the execution of his duty, or if any rescue be made or attempted to be made of any property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding twenty dollars, to be recovered by order of the Court, or before a Justice of the Peace of the County or City, and to be imprisoned for any term not exceeding three months, and the Bailiff of the Court, or any peace officer, may in any such case take the offender into custody (with or without warrant) and bring him before such Court or Justice accordingly. 13-14 V. c. 53, s. 100].

##### *Misconduct of Clerks, Bailiffs, &c.*

Misconduct of Clerks and Bailiffs.

**218.** If any Bailiff or officer, acting under colour or pretence of process of the Court, is guilty of extortion or misconduct, or does not duly pay or account for all money levied or received by him by virtue of his office, the Judge, at any sitting of the Court, if a party aggrieved thinks fit to complain to him in writing, may enquire into the matter in a summary way, and for that purpose he may summon and enforce the attendance of all necessary parties and witnesses, and may make such order thereupon for the repayment of any money extorted, or for

the due payment of any money so levied or received, and for the payment of any such damages and costs to the parties aggrieved, as he thinks just; and in default of payment of the money so ordered to be paid by such Bailiff or officer within the time in such order specified for the payment thereof, the Judge may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress (or summarily in the first instance) may commit the offender to the Common Gaol of the County for any period not exceeding three months. C. S. U. C. c. 19, s. 185.

### *Extortion.*

**219.** If any Clerk, Bailiff or other officer exacts or takes any fee or reward other than the fees appointed and allowed by law for or on account of anything done by virtue of his office, or on any account relative to the execution of this Act, he shall, upon proof thereof before the Court, be forever incapable of being employed in a Division Court in any office of profit or emolument, and shall also be liable in damages to the party aggrieved. C. S. U. C. c. 19, s. 186. Extortion.

### *Negligence of Bailiffs.*

**220.** In case any Bailiff employed to levy an execution against goods and chattels, by neglect, connivance or omission, loses the opportunity of so doing, then upon complaint of the party thereby aggrieved, and upon proof by the oath of a credible witness of the fact alleged to the satisfaction of the Court, the Judge shall order the Bailiff to pay such damages as it appears the plaintiff has sustained, not exceeding the sum for which the execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof and on his refusal to satisfy the same; payment shall be enforced by such means as are provided for enforcing judgments recovered in the Court. C. S. U. C. c. 19, s. 147. If Bailiffs neglect their duty in relation to execution.

**221.** If any Bailiff neglects to return any execution within three days after the return day thereof, or makes a false return thereto, the party who sued upon such writ may maintain an action in any Court having competent jurisdiction against such Bailiff and his sureties on the covenant entered into by them, and shall recover therein the amount for which the execution issued, with interest thereon from the date of the judgment, or such less sum as in the opinion of the Judge or jury the plaintiff under the circumstances is justly entitled to recover. C. S. U. C. c. 19, s. 148. Action against Bailiff and sureties for neglect of Bailiff in returning execution.

**222.** If a judgment is obtained in such suit against the Bailiff and his sureties, execution shall immediately issue thereon, and in case of the departure or removal of such Bailiff Execution may issue instantly, and if Bailiff has removed,

his sureties  
nevertheless  
liable.

from the limits of the County, the action may be commenced and carried on against his sureties alone, or against any one or more of them. C. S. U. C. c. 19, s. 149.

#### FINES, HOW ENFORCED.

Fines, how  
enforced by  
Division  
Courts.

**223.** In case a Division Court imposes any fine under authority of this Act, the same may be enforced upon the order of the Judge, in like manner as a judgment for any sum adjudged therein, and shall be accounted for as herein provided. C. S. U. C. c. 19, s. 187.

How enforced  
by Justices of  
the Peace.

**224.** In all cases in which by this Act any penalty or forfeiture is made recoverable before a Justice of the Peace, such Justice may, with or without information in writing, summon before him the party complained against, and thereupon hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same. C. S. U. C. c. 19, s. 188.

Form of con-  
viction.

**225.** In all cases where a conviction is had for any offence committed against this Act, the form of conviction may be in the words or to the effect following, that is to say:—

Be it remembered, that on this                      day of                      in the year  
of our Lord                      , A. B. is convicted before  
one (or two, as the case may be) of Her Majesty's Justices of the Peace for  
the County of                      (or before                      , a County Judge of the  
County of                      ), acting under *The Division Courts Act*, of having (*note*  
*the offence*) ; and I, (or we)                      , the said                      do  
adjudge the said                      to forfeit and pay for the same the sum of  
                    , or to be committed to the Common Gaol of the County of  
for the space of                      .

Given under                      hand and seal, the day and year afore-  
said.

C. S. U. c. 19, s. 189.

#### PROTECTION OF PERSONS ACTING UNDER WARRANTS, ETC.

Demand of pe-  
rusal and copy  
of warrant to  
be made before  
action.

**226.** No action shall be brought against the Bailiff of a Division Court, or against any person acting by his order and in his aid, for anything done in obedience to any warrant under the hand of the Clerk and seal of the Court until a written demand, signed by the person intending to bring the action, of the perusal, and a copy of such warrant has by such person, his attorney or agent, been served upon or left at the residence of such Bailiff, and the perusal and copy have been neglected or refused for the space of six days after such demand. C. S. U. C. c. 19, s. 195.

Bailiff entitled  
to verdict on  
production of  
warrant.

**227.** In case, after such demand and compliance therewith by showing the warrant to and permitting a copy thereof to be taken by the person demanding the same, an action is brought

against such Bailiff or other person who acted in his aid for any such cause without making the Clerk of the Court who signed or sealed the warrant a defendant, then on producing or proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction or other irregularity in or appearing by the warrant. C. S. U. C. c. 19, s. 196.

**228.** If an action is brought jointly against such Clerk and Bailiff, or the person who acted in his aid, then on proof of the warrant the jury shall find for the Bailiff or the person who so acted, notwithstanding such defect or irregularity as aforesaid; and if a verdict is given against the Clerk, the plaintiff shall recover his costs against him, to be taxed by the proper officer in such manner as to include the costs which the plaintiff is liable to pay to the defendant for whom a verdict has been found. C. S. U. C. c. 19, s. 197.

If Clerk and Bailiff joint defendants, Bailiff entitled to verdict on producing warrant, and what costs plaintiffs entitled to.

**229.** In any such action the defendant may plead the general issue, and give the special matter in evidence at any trial to be had thereon. C. S. U. C. c. 19, s. 198.

Defendant may plead general issue.

#### GENERAL PROVISIONS WITH REGARD TO ACTIONS FOR THINGS DONE UNDER THIS ACT.

**230.** No levy or distress for any sum of money to be levied by virtue of this Act shall be deemed unlawful, or the person making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto, nor shall the person distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him: but the person aggrieved by such irregularity may recover full satisfaction for the special damage. C. S. U. C. c. 19, s. 192.

Distress not to be deemed unlawful or persons making it trespassers by reason of defect in proceedings.

Not to be trespassers *ab initio*.

**231.** Any action or prosecution against any person for anything done in pursuance of this Act shall be commenced within six months after the fact was committed, and shall be laid and tried in the County where the fact was committed, and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action. C. S. U. C. c. 19, s. 193.

Limitations of actions for things done under this Act.

**232.** If tender of sufficient amends is made before action brought, or if the defendant, after action brought, pays a sufficient sum of money into Court with costs, the plaintiff shall not recover, and in any such action the defendant may plead the general issue, and give any special matter in evidence under that plea. C. S. U. C. c. 19, s. 194. *And see the Act to protect Justices of the Peace and other officers from Vexatious Actions. Rev. Stat. c. 73.*

Defendant may tender amends and plead the general issue, &c.



Plaintiff not to have costs where verdict not over ten dollars without certificate.

**233.** In case any suit is brought in any of Her Majesty's Superior or other Courts of Record in respect of any grievances committed by any Clerk, Bailiff or officer of a Division Court, under colour or pretence of the process of such Court, and the jury upon the trial find no greater damages for the plaintiff than ten dollars, the plaintiff shall not have costs unless the Judge certifies in Court upon the back of the record, that the action was fit to be brought in such Court of Record. C. S. U. C. c. 19, s. 116. *See also Rev. Stat. c. 50, s. 351.*

#### DISPOSAL OF FINES.

Fines, how disposed of.

**234.** The moneys arising from any penalty, forfeiture or fine imposed by this Act, not directed to be otherwise applied, shall be paid to the Clerk of the Court which imposed the same, and shall be paid by him to the County Crown Attorney of the County to be by him paid over to the Provincial Treasurer, and shall form part of the Consolidated Revenue Fund. C. S. U. C. c. 19, s. 190.

#### DISPOSAL OF MONEYS PAID INTO COURT.

Unclaimed moneys to be paid over to County Crown Attorney.

**235.** All sums of money which have been paid into Court to the use of any suitor thereof, and which have remained unclaimed for the period of six years after the same were paid into Court or to the officers thereof, and all sums of money when this Act takes effect or afterwards in the hands of the Clerk or Bailiff, paid into Court, or to the officers thereof, to the use of any suitor, shall, if unclaimed for the period of six years after the same were so paid, form part of the Consolidated Revenue Fund, and be paid over by the Clerk or officer holding the same to the County Crown Attorney of his County, to be by him paid over to the Treasurer of the Province, and no person shall be entitled to claim any sum which has remained unclaimed for six years. C. S. U. C. c. 19, s. 45.

Claims of persons under disability not to be prejudiced.

**236.** No time during which the person entitled to claim such sum was an infant or of unsound mind, or out of the Province, shall be taken into account in estimating the six years. C. S. U. C. c. 19, s. 46.

#### GENERAL RULES AND ORDERS.

Board of Judges to frame rules continued.

**237.** The existing Board of County Judges with authority to make Rules relating to Division Courts shall continue until superseded or revoked by the Lieutenant-Governor; and all Rules and Forms heretofore made relating to Division Courts and in force when this Act takes effect shall, so far as applicable, remain in force until otherwise ordered under the provisions of this Act. C. S. U. C. c. 19, ss. 1, 62, 70.

The Lieutenant-Governor may appoint

**238.** The Lieutenant-Governor may from time to time appoint and authorize five of the County Judges, who shall be

styled "The Board of County Judges," to frame General Rules and Forms concerning the practice and proceedings of the Division Courts, and the execution of the process of such Courts, with power also to frame Rules and Orders in relation to the provisions of this Act, or of any future Act respecting such Courts, as to which doubts have arisen or may arise, or as to which there have been or may be conflicting decisions in any of such Courts. C. S. U. C. c. 19, s. 63; 32 V. c. 23, ss. 21 & 22; 27-8 V. c. 27 s. 3.

five County Judges to frame rules, &c.

2. The Lieutenant-Governor may appoint any retired County Judge to be one of the members of the said Board. 40 V. c. 8, s. 13.

Retired Judge may be appointed.

3. The said Board may also from time to time make Rules for the guidance of Clerks and Bailiffs, and in relation to the duties and services to be performed, and to the fees to be received by them; and may also substitute other fees in lieu of fees payable to Clerks and Bailiffs under any Rule, Order or Statute. 32 V. c. 23, s. 22; 37 V. c. 7, s. 91.

Rules respecting Clerks and Bailiffs.

4. The said Board may from time to time alter or amend any Rules or Orders made for the Division Courts, and may for any Division Court Division, embracing a City or part of a City, establish a lower tariff of fees from that established for County Division Courts. 27-8 V. c. 21 s. 3; 32 V. c. 23, ss. 21 & 22; 40 V. c. 7, *Sched. A* (72).

Amendment of rules.

**239.** The Board of County Judges or any three of them, shall, under their hands, certify to the Chief Justice of the Court of Queen's Bench all Rules and Forms made after this Act takes effect, and the said Chief Justice shall submit the same to the Judges of the Superior Courts of Law, or to any four of them. C. S. U. C. c. 19, s. 64.

Board to certify rules to the Chief Justice of the Q. B. to be laid before the Judges.

**240.** The Judges of the Superior Courts of Law (of whom the said Chief Justice, or the Chief Justice of the Court of Common Pleas, shall be one) may approve of, disallow, or amend any such Rules or Forms. C. S. U. C. c. 19, s. 65.

Such rules to be approved of by the Judges;

**241.** The Rules and Forms so approved of shall have the same force and effect as if they had been made and included in this Act. C. S. U. C. c. 19, s. 66.

And have force of a statute.

**242.** The Judges who make any Rules and Forms approved of as aforesaid shall forward copies thereof to the Lieutenant-Governor, and the Lieutenant-Governor shall lay the same before the Legislative Assembly. C. S. U. C. c. 19, s. 67.

The Judges to transmit copies to the Lt.-Governor, &c.

**243.** The Lieutenant-Governor may, by warrant, direct the Provincial Treasurer to pay, out of the Consolidated Revenue

Expenses of provided for.

Fund, the contingent expenses connected with the framing, approval and printing of such Rules. C. S. U. C. c. 19, s. 68.

Practice of  
the Superior  
Courts to be  
followed in  
unprovided  
cases.

**244.** In any case not expressly provided for by this Act or by existing Rules, or by Rules made under this Act, the County Judges may, in their discretion, adopt and apply the general principles of practice in the Superior Courts of Common Law to actions and proceedings in the Division Courts. C. S. U. C. c. 19, s. 69.

### SCHEDULE.

(Section 27).

#### COVENANT BY CLERK OR BAILIFF.

Know all men by these presents, that we J. B., Clerk (*or Bailiff, as the case may be*) of the Division Court, in the County (or United Counties) of \_\_\_\_\_, S. S., of \_\_\_\_\_, in the said County of \_\_\_\_\_ (*Esquire*), and P. M., of \_\_\_\_\_, in the said County of \_\_\_\_\_ (*Gentleman*), do hereby jointly and severally for ourselves, and for each of our heirs, executors and administrators, covenant and promise that J. B., Clerk (*or Bailiff*) of the said Division Court shall duly pay over to such person or persons entitled to the same, all such moneys as he shall receive by virtue of the said office of Clerk (*or Bailiff*) and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk (*or Bailiff*) by law, and shall not misconduct himself in the said office to the damage of any person being a party in any legal proceeding; nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties hereto than as follows, that is to say:

Against the said J. B. in the whole,	— dollars.
Against the said S. S. ....	— dollars.
Against the said P. M. ....	— dollars.

In witness whereof, we have to these presents set our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord one thousand eight hundred and \_\_\_\_\_.

Signed, sealed and delivered, }  
in the presence of }

C. S. U. C. c. 19 : Form A.

## 3. JURORS AND JURIES.

## CHAPTER 48.

## An Act respecting Jurors and Juries.

Preliminary ss. 1, 2.	Juries of Merchants. ss. 117-123.
Qualifications and Exemptions, ss. 3-12.	Costs of Special Juries, ss. 124, 125.
First Selection of Jurors from Assessment Rolls, ss. 13-23.	Views, ss. 126-131.
Jurors' Books, preparation of, ss. 24-37.	Miscellaneous :-
Second Selection of Jury Lists from Jurors' Books. ss. 38-57.	Duties of Sheriffs may be performed by Deputy, s. 132.
Selection in case of separation of United Counties, ss. 58-61.	Omissions not to vitiate verdicts, s. 133.
Process for return of Panels of Jurors, ss. 62-79.	No person to be summoned unless on the Roll, s. 134.
Drafting of Panels from Jury Lists, ss. 80-90.	Sheriffs' and Coroners' Juries, s. 135.
Summoning Jurors, ss. 91-95.	Juries <i>de ventre inspiciendo</i> , s. 136.
Mode of drafting by Coroners and Elisors, s. 96.	Fees of Jurors, ss. 137-144.
Empanelling Grand Jury, s. 97.	Fund for payment of Jurors, ss. 145-153.
Drawing Jurors at the Trial, ss. 98-102.	Fees of Selectors, &c., 154-160.
Entry and certificate of service, ss. 103-104.	1. Selectors, ss. 154, 155.
Challenges, ss. 105-7. See s. 4.	2. Clerks of Peace, s. 156.
Special Juries, ss. 108-116.	3. Sheriffs, s. 157.
	4. Criers, s. 158.
	Mode of payment, ss. 159, 160.
	Offences and Penalties, ss. 161-172.
	General Provisions, ss. 173, 174.
	Schedules, p. 582-593.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

1. This Act may be cited as "*The Jurors' Act.*"

Short title.

## INTERPRETATION.

2. The word "County," wherever it occurs in this Act, shall include "Unions of Counties" for judicial purposes, and the word "Township" shall include "Unions of Townships." C. "Township." S. U. C. c. 31, s. 1.

QUALIFICATIONS, EXEMPTIONS, AND DISQUALIFICATIONS  
OF JURORS.

3. Unless exempted, every person residing in any County, Who shall be or other local judicial division in Ontario, who is over the age qualified as a Juror.



of twenty-one years, and in the possession of his natural faculties and not infirm or decrepit, and who is assessed for local purposes upon property, real or personal, belonging to him in his own right or in that of his wife, to the amount hereinafter mentioned, shall be qualified and liable to serve as a Juror both on Grand and Petit Juries in Her Majesty's Superior Courts of Common Law, having general criminal or civil jurisdiction throughout Ontario, and in all Courts of civil or criminal jurisdiction within the County, or other local judicial division of the County in which he resides. C. S. U. C. c. 31, s. 3.

Parting with property after assessment not to disqualify.

4. No person enrolled as a Juror in respect of property, of which he was at the time seised or possessed, shall be disqualified or exempted from serving as such Juror, in consequence of his having ceased to be seised or possessed of such property between the time of enrolment and of his being called upon to serve as such Juror, nor shall the same form any ground of challenge to such Juror. C. S. U. C. c. 31, s. 4.

Joint proprietors to be deemed equally interested.

5. Wherever property is assessed on the assessment-roll of any Township, Village or urban ward, as the property of two or more persons jointly, the Selectors of Jurors to whom it belongs to extract from such roll the names thereon of those qualified and liable to serve as Jurors, may, and, if they have the requisite information as to the names of the parties to enable them to do so, shall, in making such extract, and for all the purposes of this Act, treat such property as if it belonged to such persons in equal proportions, and such Selectors shall treat each of such persons, as respects his qualification and liability to serve as a Juror, as if he had been severally assessed for such equal proportion of such property. C. S. U. C. c. 31, s. 5.

Property qualifications.

6. The amount of property in respect of which a person is qualified and liable to serve as a Juror shall, by the Selectors for each Township, Village or urban ward, be determined by the relative amount of property for which the person is assessed on the assessment-roll of the Township, Village or ward of which he is a resident inhabitant at the time of the annual selection of Jurors, and the mode for ascertaining the same shall be as follows, that is to say: The names of one half of the assessed resident inhabitants of the Township, Village or urban ward which remain after striking from the said Roll the names of all persons entirely freed and exempt or disqualified from serving as Grand or Petit Jurors, under any of the provisions of this Act, shall be copied from the assessment-roll of such Township, Village or ward, commencing with the name of the person rated at the highest amount on such roll and proceeding successively towards the name of the person rated at the lowest amount, until the names of one half of the persons assessed upon such roll have been copied from the same; and the amount for which the last of such persons is assessed upon the

Mode of ascertaining such qualification.

said roll shall be that which qualifies every resident inhabitant of such Township, Village or urban ward, and renders him liable to serve as such Juror. C. S. U. C. c. 31, s. 6.

7. The following persons are hereby absolutely freed and exempted from being returned and from serving as either Grand or Petit Jurors in any of the Courts, and shall not be inserted in the Rolls to be prepared and reported by the Selectors of Jurors as hereinafter mentioned :

Persons exempted from serving as Jurors ; and not to be inserted on the Rolls.

1. Every person upwards of sixty years of age ;
2. Every member of the Executive Council of Canada and of this Province ;
3. The Secretaries of the Governor-General and the Lieutenant-Governor ;
4. Every officer and other person in the service of the Governor-General or Lieutenant-Governor for the time being ;
5. Every officer of the Dominion or Provincial Government ;
6. Every clerk and servant belonging to the Senate and House of Commons and the Legislative Assembly, or to the Public Departments of Canada or of this Province ;
7. Every Inspector of Prisons ;
8. The Wardens of the Provincial Penitentiary, the Central Prison and the Reformatory ; and
9. Every officer and servant in the said Penitentiary, Central Prison and Reformatory ;
10. Every Judge of a Court having general jurisdiction throughout Ontario ;
11. Every Judge of any County or other Court (except the General Sessions of the Peace) having jurisdiction throughout any County ;
12. Every Sheriff, Coroner, Gaoler and Keeper of a House of Correction or Lock-up-House ;
13. Every Priest, Clergyman and Minister of the Gospel recognized by law, to whatever denomination of Christians he may belong ;
14. Every member of the Law Society of Upper Canada, actually engaged in the pursuit or practice of his profession, whether as a Barrister or Student ;

15. Every Attorney and Solicitor actually practising ;

16. Every Officer of any Court of Justice whether of general, County, or other local jurisdiction, actually exercising the duties of his office ;

17. Every Physician, Surgeon and Apothecary, duly qualified to practise and being in actual practice ;

18. Every Officer in Her Majesty's Army or Navy on full pay ;

19. The Officers, non-commissioned officers and men of corps of Volunteers, while they continue such ; and a certificate under the hand of the Officer commanding any such corps shall be sufficient evidence of the service in his corps of any Officer, non-commissioned officer or man for the then current year, and of his exemption as aforesaid ; 27 V. c. 3, s. 20.

20. Every Pilot and Seaman actually engaged in the pursuit of his calling ;

21. Every Officer of the Post Office, Customs, and Excise ;

22. Every Sheriff's Officer and Constable ;

23. Every County, Township, City, Town and Village Treasurer and Clerk ;

24. Every Collector and Assessor ;

25. Every Professor, Master and Teacher of any University, College, Collegiate Institute, High School, Public School or other School or Seminary of learning, actually engaged in performing the duties of such appointment ;

26. Every officer and servant of any such University, College, School or Seminary of learning, actually exercising the duty of his office or employment ;

27. Every Editor, Reporter and Printer of any public Newspaper or Journal actually engaged in such employment or occupation ;

28. Every person actually employed in the management and working of any Railway ;

29. Every Telegraph Operator ;

30. Every Miller ;

31. Every Fireman belonging to any regular Fire Company ;

But no Fireman shall be exempt from serving as a Juror,

unless the Captain or other Officer of the Fire Company, at least five days before the time appointed for the selection of Jurors, notifies to the Clerk of the Municipality the names of Firemen belonging to his Company, residing within such Municipality, and claims exemption for such Fireman. C. S. U. C. c. 31, s. 7.

8. Every Member of the Senate and House of Commons and of the Legislative Assembly of this Province,—every Warden and every member of any County Council,—every Mayor, Reeve or Deputy Reeve of any City, Town, Township, or Village,—every Justice of the Peace, and every other member and officer of any municipal corporation, is hereby absolutely freed and exempted from being selected by the Selectors of Jurors herein-after mentioned to serve as a Grand or Petit Juror in Her Majesty's Inferior Courts, and none of the names of any such person shall be inserted in the rolls from which Jurors are to be taken for such purposes, and if any such name be at any time accidentally inserted in any such roll, it shall, if drawn in selecting any Jury List or drafting any panel therefrom, be set aside and not inserted therein, and every such person is moreover absolutely freed and exempted from being returned upon any general precept to serve as a Petit Juror at any Sessions of Assize or Nisi Prius, Oyer and Terminer or General Gaol Delivery and the name of any such person, if drawn in drafting such panel, shall be set aside and not inserted in the same. C. S. U. C. c. 31, s. 8.

Members of the Legislature and certain municipal functionaries exempted from serving at certain Courts.

9. Every person whose name had been inserted in any of the Jury Lists for the year next before that in which his name is again drawn in any of such Lists, or for some prior year within the rule of exemption hereby established, and who had duly served on some panel returned under a general precept from such Jury List until discharged by the Court to which such panel was returned, shall be exempt from having his name inserted in any such List for any subsequent year within such rule of exemption, that is to say: If the Jurors' Roll from which such name is drawn contains a sufficient number of names to make two complete Jury Lists of the denomination of such Jurors' Roll, and if it appears by the Jurors' Book of the preceding year that the name of such person was inserted in any of the Jury Lists for that year, and that he duly attended and served upon any such panel, the name of such person shall not be inserted in such Jury List; and if there is a sufficient number of names on such Jurors' Roll to make three such complete Jury Lists, and if it appears by the Jurors' Books of either of the two preceding years that his name was inserted in any of such Jury Lists, for either of such years, and that he duly attended and served as aforesaid for either of such years, the name of such person shall not be inserted, and so on, *toties quoties*, allowing one additional year's exemption for each complete additional Jury List that such Jurors' Roll furnishes as aforesaid. C. S. U. C. c. 31, s. 9.

Exemptions arising from having actually served as a Juror within a certain time previously.



Service at Division Courts not to exempt.

**10.** Service as a Juror at any Division Court shall not exempt such Juror from serving as a Juror at any Court of Record or in the Court of Chancery, and no person who is by law exempted from serving as a Petit Juror in the Superior Courts shall be compelled to serve as a Juror in any Division Court. C. S. U. C. c. 31, s. 11.

Aliens disqualified.

**11.** No man not being a natural-born or naturalized subject of Her Majesty shall be qualified to serve as a Grand or Petit Juror in any of the Courts aforesaid on any occasion whatever C. S. U. C. c. 31, s. 12.

Attainted persons disqualified.

**12.** No man attainted of any treason or felony, or convicted of any crime that is infamous, unless he has obtained a free pardon, and no man who is under outlawry, shall be qualified to serve as a Grand or Petit Juror in any of the said Courts on any occasion whatever. C. S. U. C. c. 31, s. 13.

#### SELECTION AND DISTRIBUTION OF JURORS FROM THE ASSESSMENT ROLL.

Certain municipal functionaries to be Selectors of Jurors.

**13.** The Mayor or Reeve, the City, Town, Village or Township Clerk, and the Assessor, or Assessors if there be more than one, of the respective Cities, Towns, Villages and Townships in Ontario shall be *ex officio* the first Selectors of Jurors for every Township and Village and for each ward of every such City or Town. C. S. U. C. c. 31, s. 14.

When the selection shall be made;

And where.

**14.** The Selectors shall assemble annually on the first day of September, or if such day be a Sunday or statutory holiday, then on the first day thereafter not being such holiday, at the place where the meetings of the Municipal Council of such City, Town, Village or Township are usually held, or at such other place within the Municipality as may for that purpose be appointed by the Head of such Municipal Corporation, or during his absence, or the vacancy of the office, by the Clerk thereof, for the purpose of selecting from the assessment rolls of such City, Town, Village or Township the names of the persons qualified and liable to serve as Jurors under this Act. C. S. U. C. c. 31, s. 15.

Principles by which the Selectors are to be governed.

**15.** The Selectors shall select such persons as in the opinion of the Selectors, or of a majority of them, are from the integrity of their characters, the soundness of their judgments and the extent of their information the most discreet and competent for the performance of the duties of Jurors. C. S. U. C. c. 31, s. 16.

The Clerks of Councils to produce assessment-rolls, etc.

**16.** The City, Town, Village or Township Clerk, or the Assessor or Assessors, or the other officer or person who has the actual charge or custody of the assessment roll for any City, Town, Village or Township for the year, shall, at the time aforesaid, bring such assessment roll to the annual meeting

of the Selectors of Jurors for such City, Town, Village or Township, and permit the use of the same for the purpose aforesaid. C. S. U. C. c. 31, s. 17.

**17.** Such Selectors shall annually, on the said first day of September, or if they have been unable to complete the duty hereby imposed upon them on such first day, then on the first day next thereafter not being a Sunday or a statutory holiday, proceed to select the names from such rolls, and shall before entering upon the performance of their duties, severally make and subscribe an oath or affirmation in the form following :

"I, A. B., do swear (*or affirm, as the case may be*), that I will truly, faithfully and impartially, without fear, favour or affection, and to the best of my knowledge and ability, perform the duty of a Selector of Jurors, and will select from the proper lists the requisite number of the most fit and proper persons to serve as Jurors for the year of Our Lord, one thousand eight hundred and . So help me God."

"Sworn (*or affirmed*) before me, at , the day of 18 ."  
(Signed) C. D., J. P., (Signed) A. B.

which oath or affirmation any Justice of the Peace may (within his jurisdiction) administer. C. S. U. C. c. 31, s. 18.

**18.** The Selectors shall select from those qualified to serve on Juries, at least two-thirds of the persons whose names appear on the said rolls. C. S. U. C. c. 31, s. 19.

**19.** In case of an equality of votes amongst such Selectors as to any one or more of the names to be so selected, or as to the division of the report of such Selectors in which any such name shall be inserted in the distribution of such names as hereinafter provided, or as to any other incidental question which may arise, the Mayor or Town Reeve, or in the case of his absence or the vacancy of the office, the City, Town, Village or Township Clerk, or in the absence or vacancy of the offices of both, then the Assessor whose roll for the year contains the greatest number of assessed names, and in the case of joint Assessors, the Assessor first named in the appointment of such Assessors, shall have a casting or double vote in the decision of the question. C. S. U. C. c. 31, s. 20.

**20.** The said Selectors shall then prepare a set of ballots or pieces of parchment, card or paper of uniform and convenient size, containing the same number of ballots as there are names selected, allowing one name to each ballot, and on one of each such ballots shall be printed or written the name of one of the persons whose names have been selected as hereinbefore mentioned, and the Selectors shall then proceed to ballot for jurors one half of the number of such persons.

Mode of balloting.

2. The manner of balloting shall be as follows, that is to say :

(a). The Selectors, or one of them, shall place the ballots promiscuously in a box or urn to be procured by them for that purpose, and shall cause such box or urn to be shaken so as sufficiently to mix the ballots, and shall then openly draw from the said box or urn indiscriminately, one of said ballots, and declare openly the name on such ballot, whereupon the Clerk, or one of the Selectors present, shall immediately declare aloud the name of the person thus balloted ;

(b). And thereupon the name and addition of the person whose name has been so selected, shall be written down on a sheet of paper provided for that purpose ;

(c). Which being done, the Selectors shall proceed in like manner to ballot and dispose of other numbers from the said box or urn, until the necessary number has been completed. C. S. U. C. c. 31, s. 21.

Jurors to be distributed into four divisions.

21. The Selectors having made such selection and ballot shall, for the purpose of the report thereof, distribute the names of the persons so balloted into four divisions ; the first consisting of persons to serve as Grand Jurors in the Superior Courts ; the second, of persons to serve as Grand Jurors in the Inferior Courts ; the third, of persons to serve as Petit Jurors in the Superior Courts, including the Court of Chancery ; and the fourth, of persons to serve as Petit Jurors in the Inferior Courts, and shall make such distribution according to the best of their judgment, with a view to the relative competency of the parties to discharge the duties required of them respectively. C. S. U. C. c. 31, s. 22.

Proportion to be placed under each division.

22. The Selectors shall make the distribution among the four divisions as nearly as may be in the following proportions relatively to the whole number of persons balloted, that is to say : one-eighth as nearly as may be under the division to serve as Grand Jurors in the Superior Courts ; one-eighth as nearly as may be under the division to serve as Grand Jurors in the Inferior Courts ; three-eighths as nearly as may be under the division to serve as Petit Jurors in the Superior Courts, and three eighths as nearly as may be under the division to serve as Petit Jurors in the Inferior Courts. 37 V. c. 7, s. 74.

Selectors to make out a duplicate report, &c.

23. The said Selectors of Jurors respectively shall thereupon make out in duplicate under their hands and seals, or under the hands and seals of such of them as perform the duty, a report of their selection, ballot and distribution for the Township, or Village or urban ward, as the case may be, which report shall be as nearly as may be in the form given in Schedule A, appended to this Act and be filled up agreeably to the directions contained in the notes to such form ;

2. There shall be subjoined to each duplicate report a written declaration subscribed by the Selectors respectively, stating each for himself, that he had made the selection, ballot and distribution to the best of his judgment and information pursuant to this Act, and without fear, favour or affection of, to, or for any person or persons whomsoever, gain, reward or hope thereof, other than such fees as they are lawfully entitled to receive for the same under the authority of this Act.

Declaration to be subjoined to the report.

3. One of such duplicate reports shall, on or before the fifteenth day of the same month of September, be deposited by such Selectors with the Clerk of the Peace for the County in which the Town, Village or Township lies, or within the limits of which such City is embraced; and the other duplicate, with the City, Town or Village or Township Clerk, as the case may be.

Reports to be deposited with certain officers.

4. Such Clerks respectively shall keep such duplicate reports on file in their respective offices for the use and information of all who may have lawful occasion to examine or make use of the same.

Who shall keep the same on file.

5. In case of the loss or destruction of any duplicate original Selectors' report, the officer in whose office the same was when so lost or destroyed, shall, as soon as reasonably may be, procure from the officer, to whom the legal custody of the other duplicate original of such report belongs, a certified copy of such duplicate report, and shall file the same in his office in lieu of the duplicate original, and such certified copy shall be thenceforth taken, received and acted upon in all respects as if it were the duplicate original report so lost or destroyed. C. S. U. C. c. 31, s. 24 (1-5.)

In case of loss, a copy of such duplicate report to be filed.

#### PREPARATION OF JURORS' BOOKS.

24. The Clerk of the Peace for every County shall annually procure a book and keep the same as nearly as may be in the form of Schedule B to this Act and agreeably to the directions contained in the notes to such Schedule, and such book shall be called "The Jurors' Book," for the County of which he is such Clerk, and the year for which such book is to be used, as hereafter provided, shall be inserted therein. C. S. U. C. c. 31, s. 25.

Clerk of the Peace to prepare Jurors' Books in form of Schedule B;

25. From the reports of the first Selectors of Jurors for the different Townships, Villages and urban wards, or other like local divisions of the County, so made to the several Clerks of the Peace for such year as aforesaid, or from such of them as may have been so made to them respectively, on or before the fifteenth day of September, in such year, each such Clerk shall, between the fifteenth day of September and the tenth day of November in such year, transcribe into the Jurors' Book aforesaid, in alphabetical order, the names and additions of all persons selected to serve as Grand or Petit Jurors, as the same

In which shall be entered the names of Grand and Petit Jurors.



are set forth and distributed in such reports. C. S. U. C. c. 31, s. 26.

Such book to contain four Rolls of Jurors.

**26.** Such names shall be transcribed into the book in four Rolls: the first to be called "Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction," the second, "Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction," the third, "Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal or Civil Jurisdiction and in the Court of Chancery," and the fourth, "Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal or Civil Jurisdiction." C. S. U. C. c. 31, s. 27.

Names and additions of Jurors.

**27.** In each of such Rolls shall be transcribed the names and additions of all persons by the Selectors selected, balloted and reported as aforesaid to serve as Jurors in each respective County. C. S. U. C. c. 31, s. 28.

Deposit of certified Jurors' Book with the Clerk or Deputy Clerk of Crown of Q. B. in the County.

**28.** The Clerk of the Peace shall, on or before the thirty-first day of December, cause a correct copy of such Jurors' Book, certified by him to be a true copy of the original, to be made and deposited in the office of the Clerk or Deputy Clerk of the Crown and Pleas of Her Majesty's Court of Queen's Bench in the County, as the case may be, and from it, in the event of the loss or destruction of the original by fire or other accident, a duplicate original of such Jurors' Book shall be made, and being certified by the said Clerk or Deputy Clerk of the Crown and Pleas to be truly copied from the copy deposited in his office, shall, upon such loss or destruction being established upon oath or affirmation before two or more Justices of the Peace of the County, be received and used on all occasions and for all purposes, as the original so lost or destroyed. C. S. U. C. c. 31, s. 29.

When copies therefrom to be procured and used.

**29.** In every case of the destruction of any original Jurors' Book, the Clerk of the Peace for the County shall, as soon as reasonably may be, procure a duplicate original of such book, certified as aforesaid, and deposit the same in his office as above provided. C. S. U. C. c. 31, s. 30.

Notice to be given to the Sheriff, &c.

**30.** In every such case the Clerk of the Peace shall, as soon as may be after procuring such duplicate original, give to the Sheriff or other officer of the County to whom the return of jury process belongs, notice of such destruction, and of the procurement and deposit of such duplicate original in lieu of the original, and thereupon such Sheriff or officer shall furnish to such Clerk of the Peace copies of all panels of Jurors drafted by such Sheriff or officer from the Jury Lists in the original book; and such Clerk of the Peace shall thereupon enter such panels in the duplicate original Jurors' Book, in like manner as the same were entered in the said original Jurors' Book. C. S. U. C. c. 31, s. 31.

**31.** In every case in which a proclamation issues, disuniting a Junior County from a Senior County or Union of Counties to take effect from and after the first day of January of the then following year, the Clerk of the Peace for the Union of Counties of which Junior County is at the time a member, shall procure two of such Jurors' Books, one for the County or Counties from which such Junior County is to be so disunited, and the other for such Junior County itself. C. S. U. C. c. 31, s. 32.

When union of Counties dissolved what shall be done by Clerk of the Peace.

**32.** Such Clerk shall transcribe into the former of such Books the names and additions of all persons selected for the different Townships, Villages and urban wards of such Senior County or Counties, into the latter of such Books, the names and additions of all persons selected for the different Townships, Villages and urban wards of such Junior County respectively. C. S. U. C. c. 31, s. 33.

How the Jurors' names shall be arranged in the books.

**33.** In every such case the preparing of the Books, the selecting of the Jury Lists, and the performing of all other acts and things required by this Act to be done for such Junior County for such following year, shall be done and performed by the Clerk of the Peace and Court of General Sessions of the Peace for such original Union of Counties and by the Chairman and officers thereof. C. S. U. C. c. 31, s. 34.

Clerk of the Peace to prepare books etc.

**34.** In every such case as soon as may be after the Jurors' Book for the Junior County has been completed and the copies thereof made and deposited in the proper offices, the Clerk of the Peace of the original Union of Counties shall, on demand thereof, deliver the same to the Clerk of the Peace of the Junior County, who shall thereupon give him a receipt for such Book. C. S. U. C. c. 31, s. 35.

Clerk of the Peace of Senior County to deliver Jurors' Book to Clerk of the Peace of Junior County.

**35.** Upon such receipt being filed with the Treasurer of such Junior County, and upon the accounts of the Clerk of the Peace and Crier of the said Court of General Sessions of the Peace of such original Union of Counties for the services thus performed for such Junior County being verified by affidavit before a Commissioner for taking affidavits for the County or Union of Counties, the Treasurer of such Junior County shall pay the amount of such accounts out of the like moneys as hereinafter provided with respect to the payment of similar accounts by the Treasurers of other Counties, and such payments shall in like manner be allowed in the accounts of such Treasurer. C. S. U. C. c. 31, s. 36.

Treasurer of Junior County to pay accounts therefor.

**36.** Such Jurors' Rolls shall each be divided into Townships, Villages and wards, or other like sub-divisions answering to the local divisions of the Counties, and of the Cities and Towns embraced within the limits thereof, and such sub-divisions and also the names within each sub-division respectively, shall be arranged alphabetically, and all the names in each of

How such Jurors' Rolls are to be divided.

such Rolls thus arranged, shall be numbered with a series of current numbers from one forward. C. S. U. C. c. 31, s. 37.

How the rolls  
are to be certi-  
fied.

**37.** To each of such Rolls in the Jurors' Book shall be subjoined a certificate from the Clerk of the Peace, who prepared the same, that he has carefully compared such Roll with the reports made by the several Selectors of Jurors for the different Townships, Villages and wards and other local divisions of the County or Union of Counties, and the Cities and Towns embraced within the limits of the same for the year, as such reports remained on file in his office on the fifteenth day of September in such year, and that such Roll contains a true and correct transcript of the names and additions of all persons so selected and reported to serve as Jurors as aforesaid. C. S. U. C. c. 31, s. 38.

#### SELECTING JURY LISTS FROM JURORS' BOOKS.

Clerk of the  
Peace to bring  
Jurors' Book  
into General  
Sessions yearly  
and certify—

**38.** The Clerk of the Peace for each County shall, on the first day of the Court of General Sessions of the Peace for the County, held next after the tenth day of November in each year, bring into Court and publicly deliver to the Judge presiding at such Court *sedente curia*, the Jurors' Book so prepared by him as aforesaid for the then next year, together with the Jurors' Books for such and so many of the then next preceding years as may be required for proceeding with the selecting of the Jury Lists as hereinafter directed, and shall thereupon make oath in open Court:

That he has  
compared Jur-  
ors' Rolls.

1. That he has carefully compared the Jurors' Rolls in such first mentioned Jurors' Book with the reports made by the several Selectors of Jurors for the several Townships, Villages and urban wards within the County, as the same remained on file in his office on the fifteenth day of September preceding, and that to the best of his knowledge and belief the said Jurors' Rolls contain a true and correct transcript of the names and additions of all persons so selected, balloted and reported by such Selectors of Jurors as aforesaid;

That the Jur-  
ors' Books are  
those remain-  
ing on file.

2. That the Juror's Books secondly above mentioned are those remaining on file in his office for the years to which they purport respectively to belong, and that all entries in such last mentioned Books were truly and faithfully made therein, without fraud or collusion of any kind, and according to the very truth. C. S. U. C. c. 31, s. 39.

If the Clerk has  
been changed  
the oath to be  
modified.

**39.** If such Clerk of the Peace has not been in office during all the time that such Jurors' Books have been on file in the office of the Clerk of the Peace for the County or Union of Counties, then he shall make oath, in open Court, that all entries in such Books made during the time that he has been in office, have been truly and faith-

fully made therein, without fraud or collusion of any kind, and according to the very truth, and that he has no reason but to believe, and does therefore verily believe, that all other entries made therein prior to his appointment, were in like manner truly and faithfully made therein as aforesaid. C. S. U. C. c. 31, s. 40.

**40.** On the first occasion of bringing into Court a Jurors' Book for any County, or Union of Counties, there being no Jurors' Book for any preceding year for such County or Union of Counties, the oath to be made by the Clerk of the Peace shall be modified so as to be adapted to such circumstances. C. S. U. C. c. 31, s. 41.

The oath to be modified also when the books are brought in for the first time.

**41.** If any Clerk of the Peace is unable to make the oath required by the thirty-ninth section of this Act, as to the entries made in any such Jurors' Books previous to the time of such Book coming into his custody, or has reason to suspect that any original entries in any of such Books have, after their original completion, been erased, mutilated or altered, he shall, in lieu of that part of the said oath, make oath that, as to such entries, he is unable to speak, but that from circumstances which have come to his knowledge, or of which he has been informed, he has reason to doubt the correctness thereof, or of some parts thereof, or has reason to suspect that some of the original entries in some of such Books have been erased, mutilated or altered, as the case may be. C. S. U. C. c. 31, s. 42.

If the Clerk for the time being suspects previous errors or fraud, he is to state the same.

**42.** In every case in which the Clerk of the Peace has made an affidavit in the terms of the last preceding section of this Act, the Court of General Sessions of the Peace shall, immediately after the selection has been completed, either on the same or some subsequent day, examine and enquire, by the oath of such persons as may be informed thereof, into such supposed incorrect entries, erasures, mutilations or alterations, their nature and extent, and by whom, when and for what purpose they were made, and shall punish the parties found to have made such incorrect entries, erasures, mutilations or alterations, by fine or imprisonment in their discretion, and shall cause such incorrect entries, erasures, mutilations or alterations to be rectified, and such Books restored to their original state as nearly as may be, according to the best information they have been able to obtain of or concerning the same. C. S. U. C. c. 31, s. 43.

The General Sessions shall inquire into the matter.

**43.** The Judge presiding at such Court shall thereupon certify under his hand and seal, in such Books respectively, the receipt of such Books and the oath or affirmation upon which the same have been received, and a remembrance of the same shall, by the proper officer, be also made in the minutes of such Court. C. S. U. C. c. 31, s. 44.

The receipt of the books, &c., to be certified by the Chairman.



Court of Sessions of the Peace to determine years of search for service as Jurors.

**44.** The Court of General Sessions of the Peace, upon the receipt of the Jurors' Books, shall proceed to determine the years during which search shall be made as to whether any Juror whose name appears on such Books has served, being at least the number of years for which such Juror is entitled to exemption. 37 V. c. 7, s. 75.

Clerk of the Peace to examine the Jurors' Book for such years, &c.

**45.** The Clerk of the Peace shall thereupon and before the selection hereinafter mentioned examine the Jurors' Books for the years so determined, and shall mark in the Jurors' Books from which the selection is to be made opposite the name of each Juror therein having served during any of such years, the year and panel of such service. 37 V. c. 7, s. 76.

*Ex officio* Selectors of Jurors.

**46.** The Senior Judge of the County Court, the Junior Judge thereof, and the Mayor of any City situate in any such County, the Warden, the Treasurer, the Clerk of the Peace and the Sheriff, or in his absence the Deputy Sheriff of the County, or any three of them, shall be *ex officio* Selectors of Jurors from the Jurors' Rolls within their respective Counties. 26 V. c. 44, s. 5 ; 32 V. c. 6, s. 20.

Court of Sessions may adjourn for selections and Selectors shall attend.

**47.** The Court of General Sessions may, if necessary, be adjourned from time to time for the selection of Jurors, and the Selectors shall attend for that purpose on the day or days appointed. 37 V. c. 7, s. 79.

Selectors to be sworn.

**48.** On the day appointed for such selection, or on the day to which such selection may be adjourned such Selectors shall attend, and shall, before entering upon the performance of their duties, severally make and subscribe an oath or affirmation in the form following:—

The oath

“I, A. B., do swear (*or affirm, as the case may be*) that I will truly, faithfully and impartially, without fear, favour or affection, and to the best of my knowledge and ability, perform the duty of a Selector of Jurors, and will select from the proper lists the requisite number of the most fit and proper persons to serve as Jurors for the year of Our Lord one thousand eight hundred and . . . So help me God.

“Sworn (*or affirmed*) before me at . . . the day of . . . , one thousand eight hundred and . . .”

(Signed)

C. D.,

J. P.

(Signed)

A. B.

How administered and recorded.

**2.** Any Justice of the Peace may (within his jurisdiction) administer such oath or affirmation; and such Justice shall cause an entry thereof to be forthwith made in the minutes of the Court of General Sessions in the presence of the Judge presiding at such Court; and the Selectors having been duly sworn, the said Court shall cause proclamation to be made, *firstly*, for all persons to keep silence while the names of the persons to serve as Jurors for the next year for such County or Union of

Silence to be proclaimed,

Counties are openly selected from the Jurors' Rolls; and *secondly*, that if any one can inform the Selectors why the name of any person which may be called upon such selection should not be inserted in the Jury List for which it may be called, he is to come forth and he will be heard. C. S. U. C. c. 31, s. 52; 37 V. c. 7, s. 96.

And notice given that objections to Jurors will be heard.

**49.** The last mentioned Selectors of Jurors shall then proceed to select from the Jurors' Rolls the names of the requisite number of persons to serve as Jurors for such year, who, in the opinion of the Selectors, or of a majority of them, are, from the integrity of their characters, the soundness of their judgments and the extent of their information, the most discreet and competent for the performance of the duties of Jurors, and the selection shall be conducted in the following manner, that is to say:

Selectors to proceed to the selection.

1. The Clerk of the Peace shall then openly and audibly call aloud the name and place of residence of the person first named on the Roll of Grand Jurors for the Superior Courts, and so on through such Roll, and each successive Roll of Grand and Petit Jurors for the respective Courts in which the Jurors are required to serve;

Clerk of the Peace to call over the names on the several Rolls.

2. The presiding Judge shall thereupon put the question to the other Selectors present: "Shall this name be selected for the Grand Jury of the Superior Courts?" And if determined in the affirmative by the whole or a majority of the Selectors present, the said Judge shall thereupon make enquiry whether any one can inform the Selectors why the name of such person should not be inserted in the Jury List for which he has been so selected as aforesaid;

Question to be put as to each name, and objection heard.

3. Whereupon, if the party himself in person or by his counsel, or his attorney in the absence of counsel, by his own oath or by the testimony of witnesses, or if any other person by his own oath or by the testimony of witnesses, satisfies the Court that the person whose name has been so selected is either exempt or disqualified from serving as a Grand Juror for which he has been so called, such person's name shall not be inserted in such Jury List for such next year;

If exempt on other grounds, to be noted accordingly.

4. The cause with the name of the person so objecting, and the names of the witnesses upon whose testimony such name is set aside, shall, by the Clerk of the Peace, be stated in the Minute Book of the Court, and a short note of the cause of rejection be made on the proper Jurors' Roll opposite the name of such person;

And the grounds of exemption.

5. If no such objection is made or established to the satisfaction of the Selectors, and if they or a majority of them think fit, the names and additions at length, of such person shall,

If no objection is made, names to be inserted;

by the said Clerk of the Peace, be forthwith inserted in the Minute Book of the Court ;

And so *toties*  
*quoties*.

6. The said Selectors shall then in like manner proceed to select and set aside, or pass, another name, and so on till they have transferred the required number of names from such Roll ;

Names  
selected to be  
inserted in  
List.

7. The names so selected, with the places of residence and additions of the parties alphabetically arranged, shall, by such Clerk of the Peace, be then copied into the Jurors' Book with the title of "The Grand Jury List for the Superior Courts," and such List shall have a series of current numbers from one forward as is hereinbefore provided with respect to the Jurors' Rolls, and also a reference to the number of each name on the Roll of Grand Jurors for the Superior Courts ;

Clerk of the  
Peace to enter  
names in the  
book.

8. Each of such names shall, by the said Clerk of the Peace, be thereupon marked on such last mentioned Roll as transferred to such Jury List, by a reference to the number belonging to such name on that List ;

List so made  
to be the  
Grand Jury  
List for  
Superior  
Courts.

9. Such List, so selected and transferred, shall be the Grand Jury List for the Superior Courts for the year next after the same has been so selected. C. S. U. C. c. 31, s. 53 ; 37 V. c. 7, s. 96 & *Sched.*

Grand Jury  
List for In-  
ferior Courts  
to be made in  
like manner.

**50.** After the said Grand Jury List for the Superior Courts has been so selected and transferred as aforesaid, the said Selectors shall in like manner proceed to select and transfer from the Roll of Jurors to serve as Grand Jurors in the said Inferior Courts, to a similar List in the same Book, to be called "The Grand Jury List for the Inferior Courts" for such next year, the required number of names; and the last mentioned List, so selected and transferred, shall be the Grand Jury List for the Inferior Courts for the year next after the same has been so selected as aforesaid. C. S. U. C. c. 31, s. 54.

And then  
Lists of Petit  
Jurors of  
Superior and  
Inferior  
Courts.

**51.** The Selectors shall in like manner proceed to select and transfer the required number of names from the Roll of Jurors to serve as Petit Jurors in the said Superior Courts to the Petit Jury List for the Superior Courts for such year, and lastly from the Roll of Jurors to serve as Petit Jurors in the Inferior Courts to the Petit Jury List for the Inferior Courts for such year. C. S. U. C. c. 31, s. 55.

Number to be  
selected from  
the Rolls for a  
Jury List ex-  
cept in York  
and Went-  
worth.

**52.** The number to be selected from the Jurors' Rolls for a Jury List according to the provisions of the forty-ninth section shall, except in the County of York and in the County of Wentworth, be as follows: from the Roll of Jurors to serve as Grand Jurors in the Superior Courts, forty-eight; from the Roll of those to serve as Grand Jurors in the Inferior Courts, forty-eight; from the Roll of those to serve as Petit Jurors in the Superior Courts one hundred and forty-four; and from the

Roll of those to serve as Petit Jurors in the Inferior Courts, one hundred and forty-four. 37 V. c. 7, s. 77.

**53.** As respects the County of York, the numbers to be selected shall be as follows, from the first of such Rolls ninety-six, from the second of such Rolls ninety-six, from the third of such Rolls, three hundred and eighty-four, and from the fourth of such Rolls two hundred and eighty-eight; and as respects the County of Wentworth, the numbers to be selected shall be as follows, from the first of such Rolls seventy-two, from the second of such Rolls seventy-two, from the third of such Rolls two hundred and sixteen, and from the fourth of such Rolls two hundred and sixteen. 37 V. c. 7, s. 78.

Number in  
York and  
Wentworth.

**54.** The Selectors may select all or any of the Jury Lists before the previous ones or all of them have been transferred to the Jurors' Book. 37 V. c. 7, s. 80.

Selectors may  
select any Jury  
List before  
previous ones  
transferred to  
Juror's Book.  
The Chairman  
and Clerk of  
the Peace to  
certify books

**55.** So soon as the four Jury Lists have been so selected and transferred, the presiding Judge and Clerk of the Peace shall certify under their hands in the said book, immediately after each of such Jury Lists, that the same was on such a day duly selected and transferred from the proper Roll in open Court, as the Law directs; whereupon such Jurors' Book, with the Jury Lists so certified, shall be deposited with the said Clerk of the Peace to be kept on file in his office. C. S. U. C. c. 31, s. 56.

**56.** All the duties by this Act required of the Judge presiding at the General Sessions of the Peace, shall and may in his absence be performed by any Justice elected by the Justices present to preside as Chairman *pro tempore*. C. S. U. C. c. 17, s. 5; C. S. U. C. c. 31, s. 57.

If Chairman  
absent, pre-  
siding Justice  
to act.

**57.** In case from any cause such Jury Lists or either of them be not selected pursuant to the provisions of this Act, in any County the Lieutenant-Governor may, by warrant under his Privy Seal of which a copy shall be published in the *Ontario Gazette* of the Province, and also (if there be such) in one public newspaper published in such County, as the case may be, fix a day not sooner than fourteen days from the publication of the warrant in the *Ontario Gazette*, and also a place in such County for holding a special sittings of the Court of General Sessions of the Peace for the purpose of selecting such Jury Lists as hereinbefore directed; and the several provisions and clauses of this Act, relating to the sittings of such Court, in presence of which the selection of such Jury Lists is hereinbefore directed to be made, shall extend and apply to and be in force with respect to any such special sittings. C. S. U. C. c. 31, s. 58; 32 V. c. 6, s. 21.

If the Jury  
Lists are not  
so made at the  
time hereby  
appointed, the  
Lieutenant-  
Governor may  
appoint an-  
other day for  
the purpose.

#### SELECTION IN THE CASE OF A SEPARATION OF UNITED COUNTIES

**58.** In all cases where the separation of a Junior County from a Senior County or remaining Counties takes place at any

Assessment  
Rolls, Jury



Books, &c., to continue valid for the Counties affected, respectively, after separation.

other time than upon, from and after the first day of January in each year, under the general law applicable to such separations, the Assessment Rolls, the Jurors' Books, the Jurors' Rolls and the Jury Lists, made for the United Counties, shall, for the purposes of this Act, so far as the same apply to or contain the names of persons rated for or as resident in the Senior County or remaining Counties and in the Junior County, respectively, be the Assessment Rolls, Jurors' Books, Jurors' Rolls and Jury Lists, for the said respective Counties, to all intents and purposes as if the same had been made up by and for such Counties respectively. 26 V. c. 44, s. 1.

Provision for increasing number of names on Rolls if necessary.

**59.** In all such cases of separation, the Court of General Sessions of the Senior County or remaining Counties, and of the Junior County, may, on the summons of the presiding Judge in case it may be necessary to increase the number of names on the Jurors' Rolls, meet at such time after the separation as may be convenient, and add such names to the Jurors' Rolls as may be considered to be expedient, and such Rolls shall be as valid, to all intents and purposes, as if the same had been made at the usual time and in the ordinary manner, under this Act. 26 V. c. 44, s. 2.

Clerk of the Peace for Senior County to furnish copies for Junior County.

**60.** The Clerk of the Peace for the County which was the Senior County before the separation, having the custody of such Jurors' Books, Jurors' Rolls and Jurors' Lists, shall make and deliver copies of the same respectively, to the Clerk of the Peace of the former Junior County which has been separated, on demand made for that purpose; such copies shall be certified under the hand of the Clerk of the Peace delivering the same, as true copies of the originals, and be delivered within one week after such demand made, under a penalty of two hundred dollars, for the use of Her Majesty, Her Heirs and Successors. 26 V. c. 44, s. 3.

Penalty for default.

Charges for such copies.

**61.** The Clerk of the Peace so receiving the same shall pay, to the Clerk of the Peace so delivering them, the like charges as he is entitled to for the like services performed for his own County and office. 26 V. c. 44, s. 4.

#### JURY PROCESS.

General precepts may be issued to Sheriffs.

**62.** The Judges, Justices and others to whom the holding of any sittings of Assize and Nisi Prius, Oyer and Terminer, Gaol Delivery, General Sessions of the Peace, or County Court, by law belongs, or some one or more of such Judges, Justices or others, shall for that purpose issue precepts to the Sheriff or other proper officer for the return of a competent number of Grand Jurors, for cases criminal for such sittings, and of a competent number of Petit Jurors for the trial of such issues or other matters of fact, in cases criminal and civil, as it may be competent to such Petit Jurors to try at such sittings according to law. C. S. U. C. c. 31, s. 59.

**63.** It shall be the duty of the Clerk of the Crown of the Court of Common Pleas to procure from the Judges of the Superior Courts the several precepts for the return of panels of Grand and Petit Jurors from time to time required for the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, and to transmit the same to the several Sheriffs or other officers to whom the return of such precepts severally belongs. 37 V. c. 7, s. 49.

Clerk of Common Pleas to procure Precepts for return of panels and transmit to proper officers.

**64.** Where the day is not fixed by law, he shall procure the precepts as soon as conveniently may be after the commission or other day has been appointed upon which the Jurors to be returned upon the precepts are to be summoned to attend; and where the day is fixed by law, then as soon as conveniently may be after the close of the last preceding sittings of the same Courts. 37 V. c. 7, s. 50.

Time for procuring precepts.

**65.** The Sheriff may return the same panels to the precepts for the return of panels of Petit Jurors for the sittings of the Court of General Sessions of the Peace and for the sittings of the County Court, in all cases where the same day is appointed for holding such respective sittings. C. S. U. C. c. 31, s. 60 (*last clause*).

Sheriff may return the same panel to General Sessions and County Courts.

**66.** The number of the Petit Jurors to be returned on any general precept for the return of Petit Jurors for any sittings of Assize and Nisi Prius, Oyer and Terminer, Gaol Delivery, General Sessions of the Peace or County Court, shall not in any case be less than forty-eight nor more than seventy-two, unless by the direction of the Judges appointed to hold such sittings of Assize and Nisi Prius, Oyer and Terminer, Gaol Delivery, General Sessions of the Peace, or County Court, or one of them, who may, by order under hand and seal, direct that a greater or lesser number shall be the number to be returned. C. S. U. C. c. 31, s. 61.

Number to be summoned.

**67.** In any County in which any Justice of Assize thinks fit so to direct, the Sheriff, to whom the return of the precept for the trial of causes at Nisi Prius for such County belongs, shall empanel and summon such number of Petit Jurors not exceeding one hundred and forty-four in any County, (except the Counties of York and Wentworth or any Union of which either of those Counties is for the time being the Senior County, and in the said Counties or Unions of Counties last mentioned, not exceeding in the County of York three hundred and eighty-four, and in the County of Wentworth two hundred and sixteen) as such Justice may think fit to direct, to serve indiscriminately on the criminal and civil side.

According to the precept.

Within certain limits as to numbers.

2. Where such Justice so directs, the Sheriff shall divide such Jurors equally into two sets, the first of which sets shall consist of the necessary number of those first drawn upon such

Where two sets of Jurors may be summoned.

panel, and such Jurors shall attend and serve for so many days at the beginning of each Assize as such Justice, within a reasonable time before the commencement of such Assize directs, and the Jurors of the second set shall consist of the residue of such Jurors, and such Jurors shall attend and serve for the residue of such Assize.

Names  
therein to be  
designated.

3. The Sheriff shall in the summons to each Juror, in each of such sets, specify whether the Juror named therein is in the first or second set, and at what time the attendance of such Juror will be required.

When to be  
drawn from  
first set and  
second set.

4. During the attendance and service of the first of such sets, the Juries on the civil side shall be drawn from the names of persons in that set, and during the attendance and service of the second of such sets, from the names of the persons in such second set.

If a view has  
been granted.

5. In case a rule for a view has been obtained, in a cause to be tried by a Jury taken from such panel, the Judge before whom such case is to be tried, shall, on the application of the party obtaining the rule, appoint that in case the name of any one of the viewers stands in the panel among the first half of the names therein, the names of all the viewers shall by such Sheriff be placed in the first of such sets, and that the case shall be tried during the attendance and service of that set of Jurors. C. S. U. C. c. 31, s. 62; 37 V. c. 7, s. 78.

The Courts  
may issue  
writs and pre-  
cepts as here-  
tofore.

68. Her Majesty's Superior Courts of Common Law, and all Courts of Oyer and Terminer, and General Gaol Delivery shall respectively have the same powers and authority as heretofore in issuing any writ or precept, or in making any award or order orally or otherwise for the return of a Jury for the trial of any issue before any of such Courts respectively, or for the amending or enlarging the panel of Jurors returned for the trial of any such issue; and the return to any such writ, precept, award or order shall be made in the manner heretofore used and accustomed in such Courts, save and except that the Jurors shall be returned from the body of the County, and not from any Township or from any particular venue within the County, and shall be qualified according to this Act. C. S. U. C. c. 31, s. 63.

The Court of  
Chancery may  
issue precepts.

69. In case the Court of Chancery issues a precept or order, directed to the Sheriff of any County, requiring him to strike or summon a Jury for the trial of any issue or issues, such Jury shall be struck and summoned (as nearly as may be) in the same manner as is herein provided for striking and summoning Petit Jurors for the Superior Courts of Common Law. C. S. U. C. c. 31, s. 64.

**70.** The several directions in this Act contained, respecting the issue of precepts for the return of a panel of Grand Jurors for the sittings of Oyer and Terminer, and Gaol Delivery, as well as for the execution and return of such precepts, with all things touching the same, shall in all particulars (except as in the next section excepted), be observed and followed, with respect to the sittings of the General Sessions of the Peace. C. S. U. C. c. 31, s. 65.

The directions for precepts etc., at the Assizes to apply also to the General Sessions, etc.

**71.** The several directions in this Act contained respecting the issue of precepts for the return of a general panel of Petit Jurors for the sittings of Assize and Nisi Prius, as well for the execution and return of such precepts with all things touching the same, shall be observed and followed in all particulars with respect to the sittings of the several County Courts—except that the number of Petit Jurors to be summoned in the County of York under section sixty-seven shall not exceed two hundred and eighty-eight. C. S. U. C. c. 31, s. 66.

And County Courts.

**72.** The Judges of the County Courts respectively, if required by either plaintiff or defendant in a suit where the Sheriff is the opposing party, shall issue a precept to a Coroner of their respective Counties, at least fourteen days before the week in which the General Sessions of the Peace are to be holden, requiring him to summon, and he is hereby directed thereupon to summon the number of Jurors expressed in such precept, to be and appear at the time and place when and where the General Sessions are to be holden, on the same day on which such Sessions are generally holden, from whom a Jury shall be taken for the trial of the issue of the assessment of damages in like manner as practised in cases at Nisi Prius. C. S. U. C. c. 31, s. 67.

If the Sheriff a party, the County Court to issue a precept to the Coroner.

**73.** Every writ of *venire facias juratores*, where necessary for the trial of any issue, civil or criminal, or on any penal statute, in any of the Courts hereinbefore mentioned, shall direct the Sheriff, or other officer to whom the same is directed, "to return twelve good and lawful men of the body of his County, qualified according to law," and the rest of the writ shall proceed in the accustomed form. C. S. U. C. c. 31, s. 68.

Writs of *venire facias juratores* to direct the return of 12 Jurors.

**74.** Every precept issued for the return of Jurors for sittings of Assize and Nisi Prius, Oyer and Terminer, Gaol Delivery, General Sessions of the Peace, or County Court, shall in like manner direct the Sheriff, or other officer to whom the same is directed, "to return a competent number of good and lawful men of the body of his County, qualified according to law," and shall not require the same to be returned from any Township, or from any particular *venue* within the County. C. S. U. C. c. 31, s. 69.

What the precept shall express.

**75.** Except in trials at bar, the writ of *venire facias juratores*, where by law necessary, may be tested on the day

Teste, &c., of writs for the summoning of



Jurors, except in special instances.

on which the same issues and be made returnable on any day in Term or Vacation, and except in trials at bar, the writ of *distringas juratores* and *habeas corpora* may be tested either on the return day of the *venire* or on any subsequent day in Term or Vacation, and as well after as before or on the commission day of the Assizes at which the cause, in which the same is sued out, is intended to be tried, and any such process may be sued out of the office of the Deputy Clerk of the Crown and Pleas in the proper County, as well as out of the principal office at Toronto. C. S. U. C. c. 31, s. 70.

Contents of writs of *habeas corpora juratorum*, &c.

76. In any writ of *habeas corpora juratorum* or *distringas* subsequent to and founded upon any writ of *venire facias juratores*, it shall not be requisite to insert the names of all the Jurors contained in the panel, but it shall be sufficient to insert in the mandatory part of such writs respectively—"the bodies of the several persons in the panel to this writ annexed, named," or words of the like import, and to annex to such writs respectively panels containing the same names as were returned on the panel to such *venire facias*, with their places of abode and additions. C. S. U. C. c. 31, s. 71.

Writs of *venire facias juratores*, &c. not necessary at the Assizes, &c.

77. For the trial of issues in cases, whether criminal or civil, which come on in course for trial at any sittings of Assize and Nisi Prius, Oyer and Terminer, General Gaol Delivery, General Sessions of the Peace, or County Court, it shall not be necessary to sue out any writ of *venire facias juratores* or other Jury process, but the award of such process by the Court and the entry of such award where necessary on the Roll, together with the return of a panel of Jurors upon the general precept issued for such sittings, and the trial of such issues respectively by a Jury taken from such general panel in the manner herein provided, shall be sufficient, and shall be as valid and effectual in law as if such *venire facias juratores*, or other process, had been actually and regularly sued out in each case, and the names of the Jurors had been regularly returned upon such Jury process.

Trials at Bar not to be affected.

2. Nothing in this section contained shall extend to any issue to be tried at bar, or by order of the Court of Chancery, or by a Special Jury, or by a Jury *de ventre inspiciendo*, or in a case in which a view has been granted;

Talesmen to be deemed taken from the general panel.

3. Every Jury of which some of the Jurors have been regularly taken from such general panel shall, notwithstanding its being completed by the award of a *tales de circumstantibus*, be deemed to have been taken from such general panel for the purposes of this section;

When view is granted what Sheriff shall do on the *venire*

4. To every *venire facias* directed to a Sheriff in a case in which a view has been granted, and which *venire facias* is not endorsed for the return of a Special Jury thereon, such

Sheriff shall return the same Jurors as those whose names are inserted in the panel returned upon the general precept for the sittings at which such cause is to be tried. C. S. U. C. c. 31, s. 72. *facias juratores.*

78. If, when the cause is at issue, any plaintiff or any defendant in *quare impedit* or *replevin* has sued out a writ of *venire facias* upon which a writ of *habeas corpora* or *distringas* with a *nisi prius* has issued in order to the trial of the said issue at the Assizes or Sittings of Nisi Prius, and does not proceed to trial at the first Assizes or Sittings of Nisi Prius after the teste of such writ of *habeas corpora* or *distringas*, then (except when a view by Jurors is directed) such plaintiff, or defendant, whenever he intends to try the issue at any other Assizes or Sittings of Nisi Prius, shall sue forth a new writ of *venire facias*, commanding the Sheriff or other officer to return anew twelve good and lawful men of the body of the County qualified according to law, and the rest of the writ shall proceed in the accustomed manner, and such writ being duly returned, a writ of *habeas corpora* or *distringas* with a *nisi prius* shall issue thereupon, upon which the plaintiff or defendant may proceed to trial, as effectually to all intents and purposes, as if no former writ of *venire facias* had been prosecuted in that cause, and so *toties quoties* as the case may require. C. S. U. C. c. 31, s. 73. *What to be done if cause not tried at the first Court in which a venire facias juratores is returnable.*

79. Nothing in this Act contained shall change or alter any privilege of Parliament or of the Provincial Legislature, or shall alter, abridge or affect any power or authority, which any Court or Judge has when this Act takes effect, or any practice or form, in regard to trials by Jury, Jury process, Juries or Jurors, except in those cases only where any such power or authority, practice or form, is repealed or altered, or is inconsistent with any of the provisions hereof. C. S. U. C. c. 31, s. 74. *Former powers of Court and Judges in trials by jury not abridged, unless by express provisions.*

#### DRAFTING PANELS FROM JURY LISTS.

80. Every Sheriff or other officer to whom any writ of *venire facias* or precept for the return of Jurors is directed, shall, to such writ or precept, return a panel of the names of the Jurors contained in the proper Jury List for the year, whose names shall be drafted from such list in the manner hereinafter mentioned. C. S. U. C. c. 31, s. 75. *How Sheriffs to draft panels of Jurors.*

81. If there be no Jurors' Book, or certified copy thereof, in existence for the year, the Sheriff may return to any such writ or precept a panel of Jurors selected in like manner from the proper Jury List in the Jurors' Book of the nearest preceding year, for which there is a Jurors' Book, or certified copy thereof, in existence. C. S. U. C. c. 31, s. 76. *If no Jurors' Book for the year.*

If not a sufficient number on the lists.

**82.** If there be no Jurors, or not a sufficient number of such Jurors upon any Jury List from which a panel is so required to be drafted, liable to be drafted and to serve upon such panel, the Sheriff may return to the writ or precept a panel of Jurors selected in like manner, or the residue of whom respectively have been selected in like manner, from the proper Jury List in the Jurors' Book of the nearest preceding year for which there is a Jurors' Book, or certified copy thereof, in existence. C. S. U. C. c. 31, s. 77.

What notice Sheriffs shall give.

**83.** Upon any Sheriff or other officer being called upon to return a panel of Jurors, whether Grand or Petit, he shall give public written notice in his office, and also on the door of the Court House of the County, or if there be no Court House, then in some other public place, of the day and hour at which he will attend at the office of the Clerk of the Peace to draft such panel of Jurors from the Jury List, and at such time and place he shall proceed publicly to draft the panel by ballot from the Jury List in the presence of the Clerk of the Peace and any two Justices of the Peace of the County, who, upon reasonable notice from the Sheriff, are hereby required to attend, and in the presence of any other person or persons who may desire to be present; and for such services the said Justices shall each receive the sum of one dollar for each of such panels drafted, which sums shall be paid by the Treasurer, on receipt of the Sheriff's certificate that such service has been performed. C. S. U. C. c. 31, s. 78; 33 V. c. 16, s. 1.

Amount to be paid Justices of the Peace for each panel.

Notice to be eight days, if time admits.

**84.** If the Sheriff or other officer has sufficient time, he shall give every such notice at least eight days before the drafting of the panel, and if there be not sufficient time for that purpose, he shall give such notice as soon after his receipt of the precept or writ as conveniently may be. C. S. U. C. c. 31, s. 79.

The drafting, if not completed, may be resumed.

**85.** If the drafting or completing of the panel, at the time appointed, be prevented by unavoidable accident, the same may be had or completed at any other time in the presence of the Clerk of the Peace, and two Justices of the Peace upon a similar notice being first given of such time. C. S. U. C. c. 31, s. 80.

How Sheriff to prepare a panel.

**86.** In proceeding to draft a panel of Jurors from the Jury List, the Sheriff, or other officer to whom the return of the panel belongs, shall in the first place prepare a proper title or heading for the panel of Jurors to be returned, to which he shall fix an appropriate number according as such panel by the Jurors' Book appears to be the first, second, third or subsequent panel drafted from such Jury List, and the title or heading shall set forth the number of Jurors to be returned in words at length, or (where such Sheriff has a discretion as to such number), the number that, in the exercise of such discretion, he

has determined to return, and the number when discretionary, shall not be altered after the same has been so inserted in such title or heading. C. S. U. C. c. 31, s. 81.

87. In the second place, the Sheriff, or other officer, shall Same subject. append to such title or heading, a list of numbers from one forward to the number required, and shall prepare a set of ballots or pieces of parchment, card or paper of uniform and convenient size, such set containing the same number of ballots as there are numbers on the Jury List from which the Panel is to be drafted, allowing one number to each ballot, which number shall be printed or written on the same, and he shall then proceed to draft the Panel of Jurors in the manner hereinafter mentioned. C. S. U. C. c. 31, s. 82.

88. The manner of drafting the panel shall be as follows, How panel of jurors to be drafted. that is to say:

1. The Sheriff or other officer to whom the return of the panel belongs, shall place the ballots promiscuously in a box or urn to be procured by him for that purpose, and shall cause such box or urn to be shaken so as sufficiently to mix the ballots, and he shall then openly draw from the said box or urn indiscriminately one of the said ballots, and declare openly the number of such ballot, whereupon the Clerk of the Peace, or one of the Justices of the Peace, present as aforesaid at such drawing, shall immediately declare aloud the name to which such number is appended in the Jury List from which the panel is drafted.

2. And thereupon, if such person is exempt from being Same subject. drafted or serving upon such panel, under the seventh section of this Act, or if upon the face of such Jury List it appears that the person whose number has been so drafted had previously been drafted to serve on a panel drafted from such Jury List in obedience to a precept for the return of a general panel for any Sittings of Assize and Nisi Prius, Oyer and Terminer, Gaol Delivery, General Sessions of the Peace, or County Court, and that such person had actually attended and served upon such panel, and if a sufficient number of names to complete the panel then in course of being drafted, remain on such Jury List without taking any of those who had been previously drafted from the same list upon any former panel, the Sheriff shall publicly announce the same, and that the name of the person so drafted is, on such account, not inserted in the panel.

3. If upon examination of such Jury List no such cause Same subject. appears for omitting the name of such person from the panel then being drafted, the name and addition of the person whose name has been so drafted shall be thereupon written down on a sheet of paper provided for that purpose, and



such name shall, by the said Sheriff, or other officer, be thereupon marked on the said Jury List, with a reference to the number which will belong to such panel in the Jurors' Book;

Same subject. 4. The Sheriff shall then proceed in like manner to draft and dispose of other numbers from the said box or urn, until the necessary number for the panel to be so drafted has been completed.

Same subject. 5. The names so drafted, with the places of residence and additions of the parties, arranged alphabetically, shall then, by such Sheriff, or other officer, be transcribed on another sheet of paper, with a reference to the number of each such name respectively on the Jury List, and each such name shall, by the said Sheriff or other officer, or his Deputy, be thereupon marked upon the said Jury List, with a reference to the number which belongs to such name in the panel in the Jurors' Book;

Same subject. 6. The panel so alphabetically arranged and numbered, with a short statement of the writ or precept in obedience to which it has been drafted, the date and place of such drafting, and the names of the Sheriff, or other officer or his Deputy, and of the Clerk of the Peace and Justices of the Peace, present at such drafting, or of at least two of them, shall then be fairly entered in the said Jurors' Book, and attested by the signatures of such Sheriff, or other officer or his Deputy, and of the said Clerk of the Peace and the said Justices, or at least two of them. C. S. U. C. c. 31, s. 83.

The panel to be annexed to the writ or precept, and a copy sent to the Clerk of the Common Pleas or to the proper Deputy Clerk of Crown. **89.** The said Sheriff shall, upon his return of the writ of *venire facias*, or precept, under authority of which such panel has been drafted, annex a panel to the said writ or precept, containing the names, together with the places of abode and additions of the persons so drafted upon such panel, and shall transmit one copy thereof to the office of the Clerk of the Peace of the proper County, and another to the Clerk of the Crown and Pleas of Her Majesty's Court of Common Pleas at Toronto, or to the Deputy Clerk of the Crown, as the case may be. C. S. U. C. c. 31, s. 84; 40 V. c. 7, *Sched. A.* (73).

Copies, Jurors' Books, &c., to be open to inspection. **90.** Each of such copies, as well as the Jurors' Book, shall at all reasonable times be open to inspection by litigants or their professional agents, without fee or reward. C. S. U. C. c. 31, s. 85.

#### SUMMONING JURORS.

Jurors to be summoned, eight days. **91.** The proper officer shall summon every man bound to serve on Grand Juries or on Petit Juries, not being Special Juries, in any of the Courts aforesaid, eight days at least be-

fore the day on which the Juror is to attend, by delivering to him, or in case of his absence from the usual place of his abode, by leaving with some grown person there inhabiting, a note in writing under the hand of the Sheriff, or other proper officer, containing the substance of such summons. C. S. U. C. c. 31, s. 87.

**92.** The proper officer shall summon every man to serve on Special Jurors in any of the Courts aforesaid, in the like manner as aforesaid, three days at the least before the day on which the Special Juror is to attend; which last mentioned day may be upon, or any day after, the first day of the Assizes at which the cause is to be tried. C. S. U. C. c. 31, s. 88.

**93.** The Judges of the different Courts may, by any General Rules to be made by them for that purpose, make such regulations as they deem expedient for regulating the time and manner of bringing on such Special Jury trials at Nisi Prius. C. S. U. C. c. 31, s. 89.

**94.** The proper officer, notwithstanding any thing in this Act contained, shall summon, in the manner heretofore used and accustomed, every person required to serve upon any inquest or inquiry before any Coroner, or before any Commissioners appointed under the Great Seal of this Province, or under the seal of either of Her Majesty's Superior Courts of Common Law, or to serve as a talesman upon any Jury either for the trial of an issue, or assessment of damages, in any of the Courts aforesaid, or any matron to serve on a Jury *de ventre inspiciendo*. C. S. U. C. c. 31, s. 90.

**95.** Every Sheriff and other officer to whom the return of Jurors belongs, is hereby indemnified for empanelling and returning any person as a Grand or Petit Juror named in or taken from the Grand or Petit Jurors' Rolls for the year in which he has been summoned, although such person may not have been qualified or liable to serve as such Juror for such year. C. S. U. C. c. 31, s. 91.

#### JURORS, WHEN SUMMONED BY CORONERS, ELISORS, &c.

**96.** The manner of drafting and striking, returning and summoning Jurors by the Sheriff upon writs of *venire facias juratores*, as prescribed by this Act, shall be observed and followed by all Coroners, Elisors, and other officers having the return of Jury process, and they shall for such purpose have free access at all reasonable times to the Jurors' Book in the office of the Clerk of the Peace of the proper County; and every such Coroner, Elisor, and other officer shall possess all the powers and perform all the duties in any way connected with the drafting, striking, returning, and summoning such Jurors, as in and by this Act are prescribed to or vested in the

Sheriffs of the different Counties, with respect to Jurors returned by them upon similar process. C. S. U. C. c. 31, s. 86.

#### EMPANELLING THE GRAND JURY.

How Grand Jurors to be empanelled if a sufficient number do not appear.

**97.** Where there do not appear as many as twelve of the Grand Jurors summoned upon a panel returned upon any precept to any Court of criminal jurisdiction, every such Court, upon request made for the Queen by Her Attorney General, or any of her Counsel learned in the Law, or, in their absence, by the County Crown Attorney, or by any one thereto authorized or assigned by such Court, shall command the Sheriff or other officer to whom the making of the return belongs, to name and appoint so many of such other able men of the County, as the case may be, then present, as will make up a Grand Inquest of twelve, and the Sheriff, or other officer aforesaid, shall at such command of the Court, return such duly qualified men as are present or can be found, to serve on such Grand Inquest, and shall add and annex their names to the panel returned upon such precept; and the Court shall proceed with those Grand Jurors who were before empanelled, together with the talesmen so newly added and annexed, as if all the said Jurors had been originally returned upon such precept. C. S. U. C. c. 31, s. 92.

#### DRAWING JURY AT TRIAL.

Empanelling Jury at the trial.

**98.** The name of each man summoned and empanelled as a Petit Juror upon the general precept for any sitting of Assize and Nisi Prius, Oyer and Terminer, General Gaol Delivery, General Sessions of the Peace or County Court, with his place of abode and addition, shall by the Sheriff be written distinctly on a piece of parchment, card or paper, as nearly as may be of the form and size following, viz. :

DAVID BOOTHE,  
of Lot No. 11, in the 7th Con. of Albion,  
MERCHANT.

and such names so written shall, by the direction and care of such Sheriff, be put together in a box or urn to be by him provided for that purpose, and shall be by him delivered to the Clerk of Assize, or other Clerk of such Court. C. S. U. C. c. 31, s. 93.

**99.** Where any issue is brought on to be tried, or damages are to be assessed, such Clerk of Assize or other Clerk, shall in open Court, cause such box or urn to be shaken so as sufficiently to mix the names, and then draw out twelve of the parchments, cards or papers one after another (causing the box or urn to be shaken after the drawing of each name), and if any of the Jurors whose names are so drawn do not appear or are challenged and set aside, then such further number, until twelve Jurors are drawn, who do appear, and who after all just causes of challenge allowed, remain as fair and indifferent, and the first twelve Jurors so drawn appearing and approved as indifferent, their names being noted in the minute book of the Clerk of Assize, or other Clerk of the Court, shall be sworn or affirmed (as the case may be), and shall be the Jury to try the issue, or to assess the damages. C. S. U. C. c. 31, s. 94 (1).

How the Clerk is to proceed.

Drawing names from the box, &c.

2. The names of the men so drawn and sworn shall be kept apart by themselves until the Jury have given in their verdict, and the same has been recorded, or until such Jury have been by consent of the parties, or by leave of the Court, discharged, and then the same names shall be returned to the box or urn, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried, or any damages remain to be assessed. C. S. U. C. c. 31, s. 94 (2).

Names drawn to be kept apart, &c.

**100.** If any issue is brought on to be tried, or damages to be assessed at any of the said sittings before the Jury in any other cause have brought in their verdict, or been discharged, the Court may order twelve of the residue of the said parchments, cards or papers (not containing the names of any of the Jurors who have not brought in their verdict or been discharged,) to be drawn in the manner last aforesaid, for the trial of the issue so brought on to be tried, or for the assessment of damages, as the case may be. C. S. U. C. c. 31, s. 95.

If another Jury is required before the last drawn have brought in their verdict.

**101.** Notwithstanding the two last preceding sections, where no objection is made on the part of the Queen, or any other party, the Court may try any issue or assess damages with the Jury previously drawn to try any other issue, or to assess damages without their names being returned to the box or urn, and redrawn, or may order to retire any of such Jurors whom both parties consent to withdraw, or who may be justly challenged or excused by the Court, and may cause another name or other names to be drawn from the box or urn, and shall try the issue or assess the damages with the residue of the original Jury and such new Jurors who appear and are approved as indifferent, and so *toties quoties* as long as any issue remains to be tried or any damages remain to be assessed. C. S. U. C. c. 31, s. 96.

Several causes may be tried in succession by the same Jury.

**102.** Where a full Jury does not appear before any Court of Assize and Nisi Prius, or before any sittings of any County

If a full Jury do not appear, a *talis* may be granted.



Court for the trial of issues or assessment of damages as at Nisi Prius, or where, after the appearance of a full Jury, by challenge of any of the parties, the Jury is likely to remain untaken for default of Jurors, every such Court, upon request made for the Queen by any one thereto authorized or assigned by the Courts, or on request made by the parties plaintiff or defendant, or their respective attorneys, in any action or suit, shall command the Sheriff or other officer to whom the making of the return belongs, to name and appoint, as often as need requires, so many of such other able men, of the County, as the case may be, then present, as will make up a full Jury, and the Sheriff or other officer aforesaid shall, at such command of the Court, return such duly qualified men as may be present, or can be found, to serve on such Jury, and shall add and annex their names to any panel that has been returned upon any precept or *venire facias*, in such cause. C. S. U. C. c. 31, s. 97.

## ENTRY AND CERTIFICATE OF SERVICE OF JURORS.

The Sheriff to keep a record of Jurors who serve ;

**103.** Immediately after the Sittings of any Court of Assize and Nisi Prius. Oyer and Terminer, General Gaol Delivery, General Sessions of the Peace, or County Court, the Sheriff shall, on the Jury List from which the panel of Grand Jurors (if any) returned to such Sittings was drafted, and on the Jury List from which the panel of Petit Jurors returned upon the general precept to such Sittings was drafted, opposite the names of the Jurors respectively, note the non-attendance or default of all the Jurors in such panels who have not duly attended and served upon such panels until discharged by the Court. C. S. U. C. c. 31, s. 104.

And grant a certificate thereof, if demanded.

**104.** Every Juror who has attended and served upon any such panel as last aforesaid shall (upon application by him made to the Sheriff or Deputy Sheriff before he departs from the place of trial) receive a certificate testifying his attendance and service, and the Sheriff or Deputy Sheriff shall give such certificate upon demand. C. S. U. C. c. 31, s. 105.

## CHALLENGES.

The want of qualification a good ground of challenge.

Not the want of freehold.

Not to extend to Special Jurors.

**105.** If any man not duly qualified be returned as a Juror for the trial of any issue in any cause, civil or criminal, or on any penal statute, the want of such qualification shall be a good cause of challenge, and he shall be discharged upon such challenge if the Court is satisfied of the fact ; but the want of a sufficient property qualification shall not, at the trial of any such case, be a good cause of challenge, either by the Crown or by the party, nor a cause for discharging the Juror upon his own application ; but nothing in this section contained shall extend in any wise to any Special Juror. C. S. U. C. c. 31, s. 98.

**106.** In any civil case, and any case upon penal statute, each party, the plaintiff or plaintiffs, on one side, and the defendant or defendants, on the other, may, on each side, except in the case of Special Jurors, challenge peremptorily, without assigning any cause for the same, any three of the Jurors drawn to serve on the trial of the cause; and the right of challenge hereby conferred shall extend to the Crown, when a party within the meaning of this section; but this shall not be construed to affect the right of the Crown to cause a Juror to stand aside until the panel has been gone through. C. S. U. C. c. 31, s. 102. 40 V. c. 7, *Sched. A* (74).

In civil cases each party may challenge three peremptorily.

**107.** It shall not be a good ground of challenge against any person called upon to serve as a Juror that he belongs to any religious persuasion or denomination allowed by law to affirm instead of taking an oath, but every such person shall be as eligible and liable to serve on all Juries and inquests on his being affirmed, as if he had been sworn in the usual way. C. S. U. C. c. 31, s. 103.

That a Juror affirms no cause of challenge.

#### SPECIAL JURIES.

**108.** Her Majesty, or any prosecutor, relator, or plaintiff, and any defendant in any case whatever, whether civil or criminal, or on any penal statute, excepting only on indictments for treason or felony, may in any such case triable by a Jury have the issue joined tried by a Special Jury upon suing out the necessary Jury Process for that purpose, and procuring such Special Jury to be struck and duly summoned for the day on which the trial of such case is to be had, and every Jury so struck shall be the Jury returned for the trial of such issue. C. S. U. C. c. 31, s. 108.

Either party may strike a Special Jury.

**109.** In the event of a new trial being ordered in any case after the verdict of a Special Jury, the *venire facias juratores* shall set forth the names of the Jurors who sat on the first trial of such cause, or in the event of more trials than one having been previously had, the names of all Jurors who sat upon any of such trials, and none of the Jurors who so sat on any such former trial shall be returned or sit as Jurors upon any subsequent trial of the same cause. C. S. U. C. c. 31, s. 109.

New trial in Special Jury cases.

**110.** In every case the party desiring a Special Jury to be struck, whether an actor in the cause or not, shall have a right in person, or by his attorney or agent, to sue out a writ of *venire facias juratores* for that purpose, and every such writ before being delivered to the Sheriff or other officer to whom it is directed, shall be endorsed with a direction to such Sheriff or other officer, requiring him to return a Special Jury on the same, and every such Sheriff, or other officer, upon receipt thereof, shall, by a memorandum in writing upon such writ, appoint some convenient day and hour for striking such

The party requiring a Special Jury may sue out a writ of *venire facias juratores*.

Special Jury, the day and hour so fixed being sufficiently distant to enable the party suing out the said *venire* to give the necessary notice to the opposite party. C. S. U. C. c. 31, s. 110.

Such party to give notice to the opposite party.

**111.** In any such case the party, his attorney or agent, suing out such *venire facias*, shall give notice in writing to the opposite party, his attorney or agent, that he has sued out a *venire facias*, in the cause, for the purpose of having a Special Jury struck therein, and of the day and hour appointed by the Sheriff or other officer for striking the same, and such notice shall be served on such opposite party, his attorney or agent, four full days before the day so appointed, and an affidavit or affirmation of such service, or an admission in writing under the hand of the attorney or agent on whom it has been served, shall be produced to the Sheriff or other officer, at the time appointed for striking such Special Jury, and in default thereof the Sheriff, or other officer, shall not proceed to strike the Special Jury upon such appointment. C. S. U. C. c. 31, s. 111.

Qualifications of Special Juries to be struck under the 108th section.

**112.** Every Special Jury to be struck under the authority of the one hundred and eighth section of this Act, shall except as hereinafter provided, consist solely of persons whose names appear on the Roll of Grand Jurors for the Superior Courts or on the Roll of Grand Jurors for the Inferior Courts for the year in which the writ of *venire facias* is returnable. C. S. U. C. c. 31, s. 112.

How a special Jury is to be struck.

**113.** Every such Special Jury shall be struck in the following manner, that is to say :

Ballots to be prepared.

1. The Sheriff shall provide a set of ballots or pieces of parchment, card or paper, of as uniform and convenient a size as reasonably may be, and containing the same number of ballots as there are numbers on the respective Grand Jurors' Rolls from which the said Special Jury is to be struck, and the whole of the numbers of such Grand Jurors' Rolls, shall be printed or written, upon such ballots respectively, allowing one number to each ballot, and distinguishing each number by the letters S. C. or I. C. according as it belongs to the Roll of Grand Jurors for the Superior Courts, or to the Roll of Grand Jurors for the Inferior Courts ;

Drawing Jurors.

2. At the office of the Clerk of the Peace, at the time appointed for such purpose, in the presence of all the parties in the case and of their attorneys and agents (if they respectively attend, or if none of the said parties, their attorneys or agents, attend, then upon such proof as is hereinbefore provided of the service of the notice of striking such Special Jury,) the Sheriff shall put all the said ballots in the box or urn, and

after having caused the said box or urn to be shaken so as sufficiently to mix the said ballots, he shall draw out of the said box or urn forty of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the Grand Jurors' Roll to which such ballot belongs, and read aloud the name to which such number is appended in the said Roll;

3. If at the time of so reading any such name, either party, or his attorney or agent, objects that the man whose name has been so drawn is in any manner incapacitated from serving on the said Jury, and also then and there proves the same to the satisfaction of such Sheriff, the name shall be set aside, and the said Sheriff shall instead thereof draw out of the said box or urn another number, and shall in like manner refer to the corresponding number in the Grand Jurors' Roll to which such ballot belongs, and read aloud the name to which such number is appended in the said Roll, and such name may be in like manner set aside, and other numbers and names be drawn according to the mode of proceeding hereinbefore described for the purpose of supplying names in the places of those set aside, until the whole number of forty names not liable to be set aside is completed;

4. If in any case it so happens that the whole number of forty names cannot be obtained from the said Grand Jurors' Rolls, the Sheriff shall, in like manner from the Grand Jurors' Rolls in the Jurors' Book of the nearest year for which there is a Jurors' Book or certified copy thereof in the office of the Clerk of the Peace, ballot, in addition to those already taken from the first mentioned Grand Jurors' Rolls, the number of names required to make up the full number of forty names;

5. The said Sheriff shall thereupon make out a list of the forty names, together with their respective places of abode and additions, from which list, after a reasonable time allowed in the discretion of such Sheriff for enquiry and consideration respecting the same, each party, his attorney or agent, shall strike out twelve names, such names being so struck out by parties one by one alternately, the party suing out the *venire facias* commencing;

6. The Sheriff shall return upon such *venire facias* the sixteen persons whose names remain on such list, to appear on the day appointed for the trial of such cause;

7. From such sixteen persons, or so many of them as appear in obedience to the summons, a Special Jury for the trial of the cause shall be taken by ballot in the manner hereinbefore by the ninety-ninth section of this Act prescribed for the drawing of Petit Jurors from the general panel therein mentioned. C. S. U. C. c. 31, s. 113.

Objection to  
Jurors drawn.

If forty names  
cannot be ob-  
tained.

Sheriff to  
make lists.

Striking out.

The sixteen  
Jurors to be  
summoned.

How Special  
Juries formed.



How to proceed if either party fails to attend.

**114.** If any of the parties in the cause neglects to attend in person or by attorney or agent, at the striking of the Special Jury, the Sheriff, upon production of the affidavit, affirmation, or admission of service of the notice as aforesaid, and after waiting at least half an hour for the absent party, shall, if requested by the other party, his attorney or agent, proceed to strike the Special Jury, and in case of the continued absence of such first mentioned party, the Sheriff shall, on his behalf, strike out of the said list the twelve names to be, by such party, struck out of the list as aforesaid. C. S. U. C. c. 31, s. 114

Parties issuing writ of *ven. fac.* to deposit certain expenses of Jurors with Sheriff.

**115.** Immediately after the striking of such Special Jury, the Sheriff, or other officer charged with the execution of the writ of *venire facias juratores*, shall certify the sum required to pay the attendance of such Jurors for three days, and the allowance for mileage and Sheriff's fees; and the party suing out the said writ shall deposit with the said Sheriff or other officer the sum so certified as sufficient to pay such expenses as aforesaid, but nothing herein contained shall limit the payment required to be made to such Jurors to the sum so deposited. 36 V. c. 13, s. 2.

How if the Court of Chancery directs a trial by Special Jury.

**116.** In case the Court of Chancery directs any issue or issues to be tried by a Special Jury, such Special Jury shall be struck and summoned in (as nearly as may be) the same manner as for the Superior Courts of Law. C. S. U. C. c. 31, s. 115.

#### JURIES OF MERCHANTS, &C.

In what cases Juries of Merchants may be had.

**117.** In suits between :

(a.) Merchant and Merchant ; or

(b.) Trader and Trader ; or

(c.) Merchant and Trader, involving one or more questions of mercantile consideration ; and

2. In suits between :

(a.) Manufacturer and Manufacturer ; or

(b.) Mechanic and Mechanic ; or

(c.) Manufacturer and Mechanic, involving one or more questions of Mechanical or scientific consideration ; and

3. In suits between any of the former and any of the latter involving one or more of any of such questions ; and

4. In suits between any other persons involving one or more questions of scientific consideration ;

either of Her Majesty's Superior Courts of Law, in Term time, or any Judge thereof, in Vacation, without consent of parties in all but the last mentioned case, numbered four, and with consent of parties in the last mentioned case, may order and direct any such cause to be tried by a Special Jury of men belonging to the appropriate kind or kinds of business as aforesaid, or of scientific men respectively, as the case may be; but any such rule not made with the consent of parties, shall be made only upon a rule to show cause or summons upon which the adverse party has had the usual opportunity of being heard as in other cases. C. S. U. C. c. 31, s. 116.

In what cases the Court may order a Special Jury, with or without consent of parties.

**118.** In every rule for striking any such Special Jury, it shall be ordered that such Special Jury shall be struck, and the names of the Special Jurors be certified to the Sheriff by three Elisors to be appointed in writing by endorsement upon such rule, one by the plaintiff in the cause, his attorney or agent, another by the defendant, his attorney or agent, and the third by the Clerk or Deputy Clerk of the Crown and Pleas of the Court in which the cause is pending, or in case of such Elisors disagreeing, then by the majority of such Elisors, all three being present. C. S. U. C. c. 31, s. 117.

Contents of the order for such Jury.

To be struck by Elisors.

**119.** The Sheriff upon the *venire facias* in such cause, shall return and summon the persons whom such Elisors, or the majority of them, certify to him to have been struck as Special Jurors for the trial of the same. C. S. U. C. c. 31, s. 118.

The Sheriff to summon.

**120.** The endorsement to return a Special Jury on the *venire facias* in every such cause, shall direct the Sheriff to return a Special Jury of men of the appropriate kind of business as aforesaid, or of scientific men as the case may be, pursuant to such certificate as he may receive from the Elisors (naming them,) or a majority of them in that behalf appointed by such rule. C. S. U. C. c. 31, s. 119.

How writ of *venire facias* to be enforced.

**121.** Every such Special Jury shall be struck in the following manner, that is to say:

How such Special Juries are to be struck.

1. The three Elisors, or a majority of them, upon the delivery to them of a copy of the rule for such Special Jury and of the *venire facias* for the return of such Jury, shall, at the request of either of the parties in such cause, make an appointment in writing of a day, hour and place for striking such Special Jury as by the one hundred and tenth section of this Act is provided with respect to other Special Juries.

Appointment of a day.

2. Upon notice of such appointment being served upon the opposite party, and such service being proved as in the said section is provided with respect to other Special Juries, the said Elisors shall, at the time and place so appointed, and after waiting the time prescribed by the one hundred and four-

List of qualified persons.

teenth section, proceed to make a list of the names and additions of all the persons whose names appear on any of the Jurors' Rolls for the year in which such *venire facias* is returnable, and who in their judgment come within the description of persons required to be struck on such Jury according to the exigency of the rule.

If there be not  
forty qualified.

3. If there are not forty of such persons found upon such Rolls, and if the said Elisors, or the majority of them know of a sufficient number of persons answering the description within the County, whether such persons are otherwise qualified and liable to serve, or exempt from serving as Jurors or not, provided they are not persons disqualified from any of the causes set forth in the twelfth section of this Act, the said Elisors, or a majority of them, shall add to the list the names and additions of a sufficient number of such persons to complete the same to forty names.

If more than  
forty.

4. If there are the names of more than forty such persons on such Rolls, the said Elisors, or the majority of them, from the names of all persons on such Rolls who answer such description shall, in the manner prescribed by the one hundred and thirteenth section of this Act for the striking other Special Juries, select forty of such names.

Reducing the  
list.

5. The list of such forty names being thus completed, the same shall be reduced in the same manner as hereinbefore by the said one hundred and thirteenth section provided with respect to other Special Juries.

Names of the  
sixteen Jurors  
to be certified  
to parties.

6. The said Elisors shall thereupon give a certificate to each of the parties to the suit, their attorney or agent, certifying the names and additions of the sixteen persons whose names remain upon the list.

What exemp-  
tions shall not  
excuse.

7. Every person so struck on any such Special Jury shall be liable to serve on the same, although exempted from serving upon Juries by the general provisions of the seventh, eighth and ninth sections of this Act.

Return and  
summons.

8. The Sheriff or other officer to whom the *venire facias* is directed shall, upon receipt of either of such certificates, return and summon such sixteen persons accordingly.

Striking Jury.

9. From the sixteen persons so returned shall be selected the Jury to try such cause, in the same way and under and subject to the like restrictions as by the one hundred and thirteenth section of this Act is enacted with respect to other Special Juries. C. S. U. C. c. 31, s. 120.

In special Jury  
cases, talesmen  
to be taken

**122.** In case a Special Jury has been struck for the trial of any issue, the talesmen, if any be required, shall be selected

from the Jurors empanelled upon the Common Jury panel to serve at the same Court if a sufficient number of such men can be found, and the Queen, by any one duly authorized or assigned, and every party shall, in every such case, have and may exercise their respective challenges to the talesmen so added, and the Court shall proceed to the trial of every such issue with those Jurors who were before empanelled, together with the talesmen so newly added and annexed, as if all the said Jurors had been returned upon the writ or precept awarded to try the issue. C. S. U. C. c. 31, s. 121.

**123.** Nothing herein contained shall prevent the same Special Jury, however nominated, from being summoned and returned, to try any number of causes, provided the parties respectively, or their attorneys, signify in writing to the Sheriff, or other officer to whom the return of Juries in such cases belongs, their assent to the nomination and return of such Special Jury for the trial of their respective cases; But if a Juror has served upon one or more Special Juries at the same Assizes or Session of Nisi Prius, the Court may, upon his application, discharge him from serving upon any other Special Jury during the same Assizes or Session of Nisi Prius. C. S. U. C. c. 81, s. 122.

The same Special Jury may try several such cases—when.

#### COSTS OF SPECIAL JURIES.

**124.** The party who sues out a *venire facias* for a Special Jury in any cause, shall pay the fees for striking such Special Jury, the fees of the Jurors, and all the expenses occasioned by the trial of the cause by such Special Jury, and shall not have any further or other allowance for the same upon taxation of costs than if the cause had been tried by a Common Jury, unless the Judge who tried the case certifies under his hand, in open Court, immediately after the verdict, or afterwards, upon a summons at Chambers, that the same was a cause proper to be tried by a Special Jury. C. S. U. C. c. 31, s. 123.

The party who sues out the writ, to pay fees of striking, &c.

**125.** If, for any reason, any cause in which a Special Jury has been summoned be not tried, the party who sued out the *venire facias* for such Special Jury shall not have any further or other allowance for the same, upon taxation of costs, than if such Jury had not been summoned, unless a Judge, upon cause shewn, certifies under his hand that the same was a cause in which it was reasonable that a Special Jury should be summoned. 36 V. c. 13, s. 3.

Costs where Special Jury has been summoned but the cause not tried by them.

#### VIEW BY JURORS.

**126.** Where in any civil case, or any case on a penal statute now pending or hereafter to be brought in either of Her Majesty's Superior Courts of Law, and relating to matters within the legislative authority of the Province, it appears to such Court or to any Judge thereof in Vacation, that it will be pro-

Court may order a view out of the County in which the venue is laid.



per and necessary that the Jurors, or some of them, who are to try the issues in such case, should have a view of the place in question in order to their better understanding the evidence that may be given upon the trial of such issues, whether such place be situate within the County or United Counties in which the venue is laid, or without such County or United Counties, in any other County, such Court or Judge may order a rule to be drawn up containing the usual terms, and, if such Court or Judge thinks fit, also requiring the party applying for the view to deposit in the hands of the Sheriff of the County or United Counties in which the venue in any such case is laid, a sum of money to be named in the rule, for payment of the expenses of the view. 29-30 V. c. 46. s. 1.

[Section 1 of 29-30 V. c. 46 is as follows:—

Court may order a view out of the County in which the venue is laid.

Rule.

Deposit by party requiring view.

1. When any case, either civil or criminal, or on any penal statute, now pending or hereafter to be brought in either of Her Majesty's Superior Courts of Common Law at Toronto, it appears to such Court or to any Judge thereof in vacation, that it will be proper and necessary that the Jurors, or some of them, who are to try the issues in such case, should have a view of the place in question in order to their better understanding the evidence that may be given upon the trial of such issues, whether such place be situate within the County or United Counties in which the venue in any such case is laid, or without such County or United Counties, in any other County in Upper Canada, such Court or Judge in vacation may order a rule to be drawn up containing the usual terms, and, if such Court or Judge thinks fit, also requiring the party applying for the view to deposit in the hands of the Sheriff of the County or United Counties in which the venue in any such case is laid, a sum of money to be named in the rule, for payment of the expenses of the view.]

Writ therefor.

**127.** Such rule shall also command special writs of *venire facias* and *distringas* to issue, to the Sheriff or other officer, to whom the said writs are to be directed, commanding him to have six or more of the Jurors named in such writs, or in the panels thereunto annexed (who are mutually consented to by the parties, or if they cannot agree, are drawn by ballot from such panels), at the place in question, some convenient time before the trial. C. S. U. C. c. 31, s. 125.

*Locus in quo* to be shewn to the viewers.

**128.** The viewers shall, then and there, have the place in question shewn to them by two persons in the said writs named to be appointed by the Court or Judge; and the said Sheriff, or officer who is to execute such writs, shall, by a special return thereto, certify that the view has been had according to the command of the same, and shall specify the names of the viewers. C. S. U. C. c. 31, s. 126.

How the viewers shall be selected.

**129.** Where the parties in any such case do not agree as to the Jurors to be nominated to take the view, the viewers shall, by the Sheriff or other officer to whom the *venire facias juratores* in such case is directed, be drawn by ballot from the panel returned upon such *venire facias*, at some time and place to be appointed by the Sheriff or other officer for that

purpose, in the like manner as by the ninety-eighth and ninety-ninth sections of this Act is provided for drawing Juries from the general panel at Nisi Prius; but no such Sheriff or other officer shall proceed to draw such viewers from such panel without having first given at least forty-eight hours' notice in writing to the respective parties in the suit, of the day, hour and place of such drawing. C. S. U. C. c. 31, s. 127.

**130.** Where a view has been allowed in any case, those men who have had the view, or such of them as appear upon the Jury to try the issue, shall be first sworn, and so many only shall be added to the viewers who appear, as after all defaults and challenges allowed, make up a full Jury of twelve; C. S. U. C. c. 31, s. 128.

The viewers to be the first sworn on the Jury.

**131.** All the duties and obligations now imposed by law on the several Sheriffs and other persons when the place to be viewed is situate in the County or United Counties in which the venue is laid, shall be imposed upon and attach to such Sheriffs and other persons when the place to be viewed is situate out of the County or United Counties in which the venue is laid. 29-30 V. c. 46, s. 2.

Duties of Sheriffs, &c., in such cases.

#### MISCELLANEOUS PROVISIONS.

**132.** The duties by this Act required of the Sheriffs of the different Counties, and those also required of the Clerks of the Peace, may be performed either by the principal officer himself, or by his Deputy. C. S. U. C. c. 31, s. 138.

The duties of Sheriffs may be performed personally or by Deputy.

**133.** No omission to observe the directions in this Act contained, or any of them, as respects the qualification, selection, balloting and distribution of Jurors, the preparation of the Jurors' Book, the selecting Jury Lists, from the Jurors' Rolls, the drafting panels from the Jury Lists, or the striking of Special Juries, shall be a ground of impeaching the verdict or judgment rendered in any civil case by any Court in Ontario. C. S. U. C. c. 31, s. 139.

Omissions to observe the directions of this Act, not to vitiate the verdict.

*[Section 139 of C. S. U. C. c. 31, is as follows :*

**139.** No omission to observe the directions in this Act contained, or any of them, as respects the qualification, selection, balloting and distribution of Jurors, the preparation of the Jurors' Book, the selecting Jury Lists from the Jurors' Rolls, the drafting Panels from the Jury Lists, or the striking of Special Juries, shall be a ground of impeaching the verdict in any cause, or be allowed for error upon any Writ of Error or Appeal to be brought upon any judgment rendered in any case, criminal or civil, by any Court in Upper Canada.]

Omission to observe the directions of this Act not to vitiate the verdict, &c.

**134.** No man shall be liable to be summoned or empanelled to serve as a Juror in any County, City or Town, upon any inquest or inquiry to be taken or made by or before any Com-

No person to be summoned on Juries whose name is not on

the Roll of  
Jurors.

missioners appointed under the Great Seal of the Province, or the seal of any Court in Ontario having general jurisdiction throughout the same, or having general jurisdiction throughout any County of the same, unless the name of such person appears upon one or other of the Jurors' Rolls for the year in which such person is called upon to serve on such inquest or inquiry. C. S. U. C. c. 31, s. 130.

#### SHERIFFS' AND CORONERS' JURIES.

Except on  
Coroners'  
Juries, &c.

**135.** Nothing in the next preceding section contained shall extend to any inquest to be taken by or before the Coroner of any County, Union of Counties, City or Town by virtue of his office, or to any inquest or inquiry to be taken or made by or before any Sheriff, Coroner, or High Bailiff of any County, City or Town, but the Sheriffs, Coroners, and High Bailiffs aforesaid, in all such Counties, Cities and Towns respectively, shall respectively take and make all inquests and inquiries by Jurors of the same description as they were used and accustomed to do before the passing of this Act. C. S. U. C. c. 31, s. 131.

#### JURIES DE VENTRE INSPICIENDO.

As to Juries of  
matrons.

**136.** Nothing herein contained shall extend to any Jury of matrons, or to any writ *de ventre inspiciendo*. C. S. U. C. c. 31, s. 129.

#### FEES OF JURORS.

Jurors' fees  
and mileage.

**137.** Every Grand Juror actually attending any of the Courts of Oyer and Terminer, or at the General Sessions of the Peace, and every Petit Juryman actually attending any of the Courts of Assize and Nisi Prius, Oyer and Terminer, General Gaol Delivery, General Sessions of the Peace, or County Courts shall be entitled to receive in manner hereinafter provided, the sum of one dollar and fifty cents per day for every day he attends such Court, and the sum of ten cents per mile for every mile he necessarily travels from his place of residence to the said Court, and such additional sum, if any, as the County Council may, by by-law, from time to time fix and determine; and the distance travelled shall be ascertained by the declaration of the Sheriff's Bailiff who summoned such Juror, or by the declaration of the Juror himself; but every Juror who makes a false declaration respecting such distance, shall forfeit his right to receive any payment for travelling to, or attending, such Court as a Juror. 38 V. c. 14, s. 1.

Fees allowed.

**138.** No Petit Juror shall be entitled to any fee or allowance other than is provided by or under this Act. C. S. U. C. c. 31, s. 142.

**139.** Every Sheriff shall make a pay list for the Petit Jurors summoned to attend any of the aforesaid Courts in the form of Schedule C to this Act, and shall attend or cause some officer to attend at the opening of the Court, on the morning of every day on which such Court sits for the trial of causes by Jury, and upon the Petit Jurors being called over, shall check and mark the word "present," or "absent," as the case may be, in the proper column of such list opposite the name of every such Juror, and on the last day of the sitting of such Court shall certify and return the said pay list to the Treasurer of the County. C. S. U. C. c. 31, s. 143.

Sheriff to make a pay list for Petit Jurors.

**140.** The said pay list, checked and certified as aforesaid, shall be a sufficient authority for the Treasurer to pay to each Petit Juror the sum to which he appears entitled, as certified by such list, and the Treasurer shall forthwith pay every such Juror the sum so appearing to be due to him on such list. C. S. U. C. c. 31, s. 144.

Treasurer to pay the Jurors

**141.** Every Sheriff shall be entitled to receive from the Treasurer of the County of which he is Sheriff, such sum for each pay list, and such sum per diem for checking the same every day at the opening of the Court, and for certifying and returning the same to the Treasurer, as the County Council by by-law determines; and for the purposes of the payment of Jurors, the Courts of Oyer and Terminer and General Gaol Delivery and of Assize and Nisi Prius, when holden at the same time and under the same precept and panel of Jurors, shall be one Court; and the County Court and General Sessions shall be one Court, and the duty of calling over Jurors at the opening of the Court daily, shall be performed by the Clerk of whichever of the said Courts respectively is first opened. C. S. U. C. c. 31, s. 145.

Allowance to Sheriffs.

**142.** The Marshal or Clerk of Assize, the Clerk of the County Court or Clerk of the Peace, as the case may be, shall, at the opening of the Court, and before any other business is proceeded with, call over the names of the Petit Jurors, so that the Sheriff or his officer may check off those who are present or absent. C. S. U. C. c. 31, s. 146.

List of Jurors to be called over daily when Court opens.

**143.** A Petit Juror, not appearing when so called, shall not be entitled to any pay for the day on which he makes default, and every Petit Juror for each default he makes during the day, shall be liable to such a fine as to the Court seems meet. C. S. U. C. c. 31, s. 147.

Jurors not attending to be fined.

**144.** There shall be paid to every Special Juror summoned upon the trial of any issue in any civil cause, the sum of two dollars for each day's attendance at the sitting of the Court to which he is summoned, and for each day coming to and returning from the said Court, together with mileage for the number

Fees and mileage of special jurors in civil causes.



of miles necessarily travelled by him, in coming to the said Court, at the rate of ten cents per mile; and the sums so paid shall be the fees of Jurors, mentioned in section one hundred and twenty-four of this Act. 36 V., c. 13, s. 1.

#### FUND FOR PAYMENT OF JURORS.

##### *Fees on Entry of Nisi Prius Records.*

Sumsto be paid with record when entered for trial in jury cases.

Record not to be entered unless sum is paid.

**145.** With every record entered for trial of issues or assessment of damages by a Jury, there shall be paid to the Clerk of Assize for the County, the sum of three dollars, and to the Clerks of the several County Courts the sum of one dollar and fifty cents, and such sums shall be forthwith paid over to the Treasurer of the County and shall form part of the fund from which Petit Juries are to be paid; but the said fees shall only be charged in case there are issues to be tried by a Jury; and no record shall in such case be entered for trial or assessment unless the sums before mentioned are first paid. C. S. U. C. c. 31, ss. 148 & 149; 37 V. c. 7, s. 35.

##### *In Criminal Cases.*

The like in criminal cases where either party is liable to pay costs.

**146.** In all criminal cases in which by law the party prosecuting, or the party prosecuted, is liable to pay the costs of the prosecution, the officer of the Court shall charge against and receive from the party so liable the sum of three dollars over and above the sum to which he is otherwise liable, and such sum of three dollars shall form part of the fund for the payment of Petit Jurors, and shall forthwith be paid over by the officer receiving it, to the Treasurer of the County in which the prosecution has been carried on. C. S. U. C. c. 31, s. 150.

##### *Fines and Penalties.*

Certain fines to go towards payment of Jurors.

**147.** All fines imposed upon Jurors for non-attendance levied in the several Counties shall be paid to the Treasurers of the said Counties respectively, and shall form part of the fund for the payment of Petit Jurors under this Act. C. S. U. C. c. 31, s. 151.

##### *County Councils to Supply Deficiency.*

County Councils to provide funds for paying Jurors.

**148.** In case the sums appropriated by this Act are not sufficient to pay the said Jurors, the several County Councils shall raise and appropriate such sums of money as in their judgment will be sufficient to pay the Petit Jurors according to the terms of this Act. C. S. U. C. c. 31, s. 152.

Until provided what fees Jurors shall receive.

**149.** Until such provision is made, every Petit Juror shall be allowed the sum of twenty-five cents in every cause in which

he is sworn as a Juror in any civil case in the Superior Courts or at the Assizes, and the sum of twelve and a half cents in cases in the County Courts, and such fee shall be paid by the plaintiff or his attorney, and shall be accounted for in costs by the party charged with the payment thereof. C. S. U. C. c. 31, s. 153.

**150.** In every County in which a Petit Jury fund is for the first time provided, the Treasurer of such County shall give notice to the Sheriff of the County, who shall thereupon perform the duties imposed upon him under this Act. County Treasurer to notify Sheriff when funds are provided. C. S. U. C. c. 31, s. 154.

**151.** The Municipal Corporation of any County in Ontario of which a City or a Town withdrawn from the jurisdiction of the County Council forms part for judicial purposes, may demand and recover from the Municipal Corporation of such City or Town a portion of the expenses incurred by such County, in any year, for the payment of Jurors. Cities bound to contribute. C. S. U. C. c. 31, s. 155.

**152.** In case the Council of Counties and of Cities or separated Towns do not agree as to the shares of the fees and disbursements for Juries to be borne by the Counties, Cities and Towns respectively, the same shall be determined by arbitration under the provisions of "*The Municipal Act*;" and the portion to be borne by the City or Town shall be payable to the County immediately after the close of each year. Shares of fees for Jurors to be borne by counties, cities and towns. Rev. Stat. c. 174. 37 V. c. 7, s. 82.

**153.** The Council of the City or Town shall raise by assessment the sum of money required by such City or Town for the purposes of this Act, or shall pay such sum out of any moneys belonging to the City or Town, and applicable to municipal purposes generally. The Councils of cities and towns to raise the necessary funds by assessment, &c. C. S. U. C. c. 31, s. 157.

#### FEES TO OFFICERS UNDER THIS ACT.

##### 1.—*To Selectors.*

**154.** The Selectors of Jurors under the thirteenth section of this Act, shall for every selection and distribution of Jurors, and the report thereof made by them, be entitled to such sum of money as is authorized to be awarded them by the Council of the Municipalities of which they are respectively officers; and upon receipt of a certificate from the Clerk of the Peace that the report has been returned to him within the time limited by law, such sum of money shall be paid to such Selectors respectively by the Treasurers of their respective Townships, Villages, Towns and Cities, in such manner as such Municipal Councils severally direct. Fees to Selectors under the 13th section. C. S. U. C. c. 31, s. 158; 36 V. c. 48, s. 195.

Fees to Selectors under the 46th section.

**155.** The Selectors of Jurors under the forty-sixth section of this Act shall be entitled to the sum of four dollars each for each day's attendance for the purpose of selecting Jurors, and upon receipt of a certificate from the Clerk of the Peace for the County or Union of Counties, that the duties required of such Selectors have been duly performed by them, such sum shall be paid by the Treasurer of the County, to every such Selector of Jurors. C. S. U. C. c. 31, s. 159.

### 2.—*To Clerks of the Peace.*

Fees to Clerks of the Peace.

**156.** The Clerk of the Peace of every County shall be entitled to the following sums of money for the respective services performed by him under this Act, that is to say :

1. For receiving and examining the reports of Selectors for each city, town, village and township, causing any deficiency which may be found therein to be supplied, and filing the same in his office . . . . . \$0 50
2. For giving certificates to Selectors of Jurors, of duties having been performed . . . . . 0 50
3. For preparing in proper form each Jurors' Book, and superintending the making up of the same (besides actual disbursements for stationer's charges.) . . . . . 3 00
4. For examining and noting service of Jurors under section forty-five of this Act, per hundred names for each year for which such examination is made . . . . . 0 50
5. For arranging alphabetically and in order the names contained in Selector's report, per one hundred names . . . . . 2 00
6. For making up Jurors' Books, entering all the names and numbers, and all other matters required to be entered therein, per one hundred names . . . . . 2 00
7. For each copy of the Jurors' Book required by this Act, per one hundred names . . . . . 2 00
8. For each certificate required to be entered in the Jurors' Book to verify same . . . . . 1 00
9. For copy of Jury List required to be entered, per one hundred names . . . . . 2 00
10. For each panel of Jurors drafted from the Jury List, per one hundred names on such Jury List . . . . . 2 00
11. For entering each panel in the Jurors' Book, with the numbers corresponding to the Jury List . . . . . 2 00
12. For making up aggregate return in detail of Jurors . . . . . 5 00
13. For copy thereof, and transmitting same to Provincial Secretary when required, and for office copy of the same, each . . . . 2 00

C. S. U. C. c. 31, s. 160 ; 37 V. c. 7, s. 81.

### 3.—*To Sheriffs, &c.*

Fees to Sheriffs, &c.

**157.** The Sheriff or other officer of every such County shall, exclusive of such fees as he may be entitled to from the parties in any suit, be entitled to the following sums of money for the respective services performed by him under this Act, that is to say :

1. For each panel of Jurors, whether Grand or Petit, returned and summoned by him in obedience to any general precept for the return of the Grand or Petit Jurors for any Sittings of Assize and Nisi Prius, Oyer and Terminer, General Gaol Deli-

very, or General Sessions of the Peace or County Court respectively, under this Act. ....	\$4 00
2. For copies of such Panel to be returned to the offices of the Superior Courts of Law at Toronto, each.....	1 00
3. For every summons served upon the Jurors on any Panel, ..	25
4. In the case of Sheriffs of Counties, for every mile which the Sheriff or his Deputy or Bailiffs necessarily and actually travelled from the County Town for the purpose of serving such summonses (such mileage to be allowed for going only, and not for returning).....	0 08
5. For every certificate given to any Juror of his having served (to evidence his exemption from serving again until his time for doing so returns in its course) .....	0 20

C. S. U. C. c. 31, s. 161.

4.—*To Criers.*

**158.** The Crier of every Court of General Sessions, for making the proclamations, calling the names of all those drawn in the course of selecting such Jury Lists, and performing all duties required of him under this Act, shall be entitled to the sum of one dollar and fifty cents for every one hundred names so drawn. C. S. U. C. c. 31, s. 162.

Fees to Criers  
of General  
Sessions.

*Mode of Payment.*

**159.** In all the foregoing cases, where there are more than one hundred, or more than an even number of hundreds of such names, if the broken number beyond such hundred or hundreds falls short of fifty names, the same shall not be reckoned, and if such broken number amounts to fifty names or upwards, the same shall be reckoned as a full hundred, but in all cases of there being altogether less than a single hundred, the same shall be reckoned as a full hundred. C. S. U. C. c. 31, s. 163.

If there are  
more than one  
hundred  
names.

**160.** Upon proof, by affidavit made before a Commissioner for taking affidavits, in one of Her Majesty's Superior Courts of Common Law, of such several services having been executed, or, in the case of the Sheriff, of such travel having been necessarily performed in going to effect the service of such summonses, the affidavit being accompanied with a detailed account showing the number of miles actually and necessarily travelled in going to serve each Juror (so that at the end of the service the officer summoning the Jury shall only be entitled to mileage for the number of miles actually travelled), and upon the account being properly audited, and an order of the Board of Audit being made for the payment thereof, the Treasurer shall, out of any money in his hands belonging to the County, City or Town respectively, not otherwise specially appropriated by Act of the Legislature, pay to such officers respectively the amount of their fees; and for all such moneys so paid, the Treasurer shall be allowed in his accounts with the County, City or Town, as if the same had been paid under the special authority and direction of the Municipal Council of such County, City or Town respectively. C. S. U. C. c. 31, s. 164; 32 V. c. 6, s. 9 (2).

How the said  
fees shall be  
paid.



## PENALTIES.

Attaints of  
Jurors abolish-  
ed.

**161.** The Queen shall not, nor shall any one on her behalf, nor shall any party or parties in any case whatsoever, commence or prosecute any writ of attaint against any Jury or Jurors for the verdict by them given, or against the party or parties who have judgment upon such verdict, and no inquests shall be taken to inquire of the concealments of other inquests, but all such attaints and inquests have been and shall remain abolished. C. S. U. C. c. 31, s. 165.

[Section 166 of C. S. U. C. c. 31, is as follows :—

Embracery  
punishable as  
heretofore.

**166.** Notwithstanding anything herein contained, every person who is guilty of the offence of embracery, and every Juror who wilfully or corruptly consents thereto, shall be respectively proceeded against by indictment or information, and be punished by fine and imprisonment, in like manner as such person and Juror might have been before the passing of this Act.]

Penalty on  
Jurors for  
non-attend-  
ance.

**162.** If any person, having been duly summoned to attend on any Jury, in any of the Courts hereinbefore mentioned, does not attend in pursuance of such summons, or being there called, does not answer to his name; or if any such Juror, or any talesman, after having been called, is present, but does not appear, or after his appearance wilfully withdraws himself from the presence of the Court, the Court shall set such fine upon every such Juror or talesman (unless some reasonable excuse be proved by oath, affidavit or affirmation), as the Court thinks meet. C. S. U. C. c. 31, s. 167.

On viewers for  
non-attend-  
ance.

**163.** Where any viewer, having been duly summoned to attend on a jury, makes default, as in the last preceding section is set forth, the Court at which he has been summoned to attend for the trial of such cause shall set upon such viewer (unless some reasonable excuse be proved as aforesaid) a fine, in the discretion of the Court, to the amount of twenty dollars at the least. C. S. U. C. c. 31, s. 168.

Penalty on  
Jurors failing  
to attend upon  
inquests and  
inquiries, &c.

**164.** If any person, having been duly summoned and returned to serve as a Juror in any County, City or Town upon any inquest or inquiry, before any Sheriff or Coroner, or before any of the Commissioners mentioned in section one hundred and thirty-four, does not, after being openly called three times, appear and serve as such Juror, the Sheriff, Coroner and Commissioners respectively, shall (unless some reasonable excuse be proved on oath, affidavit or affirmation) impose such fine upon the person so making default as they respectively think fit, not exceeding twenty dollars. C. S. U. C. c. 31, s. 169.

Sheriff to cer-  
tify defaults  
and transmit  
copies.

**165.** The Sheriff, Coroner and Commissioners respectively, shall make out and sign a certificate containing the Christian name and surname, the residence and addition of every man so making default, together with the amount of the fine im-

posed and the cause of such fine, and transmit such certificate to the Clerk of the Peace for the County in which such defaulter resides, on or before the first day of the General Sessions of the Peace next ensuing. C. S. U. C. c. 31, s. 170.

**166.** Every such Clerk shall copy the fines so certified on the roll on which all fines and forfeitures imposed at such General Sessions are copied, and the same shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects, as if they had been part of the fines imposed at such General Sessions. C. S. U. C. c. 31, s. 171.

Fines to be  
estreated.

**167.** If any Sheriff, or other officer as aforesaid, wilfully empanels and returns any person to serve on a Jury in any of the Courts aforesaid, whose name has not been duly drawn upon such panel, in the manner in this Act prescribed, or if any Clerk of Assize, Clerk of the Peace, or other officer of any of the Courts aforesaid, wilfully records the appearance of any man so summoned and returned who has not really appeared,—in every such case the Court shall, upon examination in a summary way, set such fine upon such Sheriff, Clerk of Assize, Clerk of the Peace, or other officer offending, as the Court thinks meet. C. S. U. C. c. 31, s. 172.

On Sheriffs,  
etc., for de-  
fault to per-  
form duties  
assigned to  
them.

**168.** No Sheriff, Deputy Sheriff, Coroner, Elisor, Bailiff or other officer or person whatsoever, shall, directly or indirectly, take or receive any money or other reward or promise of money or reward, to excuse any man from serving or being summoned to serve on Juries, or under any such colour or pretence; and no Bailiff or other officer appointed by any Sheriff, Deputy Sheriff, Coroner or Elisor, to summon Jurors, shall summon or pretend to summon any man to serve thereon other than those whose names are specified in a warrant or mandate signed by such Sheriff, Deputy Sheriff, Coroner or Elisor, and directed to such Bailiff or other officer; and if any Sheriff, Deputy Sheriff, Coroner, Elisor, Bailiff or other officer, wilfully transgresses in any of the cases aforesaid, or summons any of the Jurors, not being a Special Juror, less than eight days before the day on which he is required to attend, or summons any Special Juror less than three days before the day on which he is to attend, except in the cases hereinbefore excepted, the Court of Assize and Nisi Prius, Oyer and Terminer, General Gaol Delivery, General Sessions of the Peace or County Court within whose jurisdiction the offence has been committed, shall, on examination and proof of such offence in a summary way, set such fine upon every person so offending as the Court thinks meet. C. S. U. C. c. 31, s. 173.

On Sheriffs,  
etc., taking  
money as a  
bribe.

**169.** If any Sheriff or Deputy Sheriff of any County, makes, or causes to be made, any alteration whatever in any of the Rolls, Lists or panels in any Jurors' Book, or in the certified

On Sheriffs,  
&c., making  
any unauthor-  
ized alteration

in any Jurors' Book, or neglecting to return the same, &c.

copies thereof in their official custody respectively, except in compliance with the directions in this Act contained, or neglects or refuses to prepare the Jurors' Book, the ballots necessary for drafting the panels, striking Special Juries and drawing Juries at the trial, or neglects or omits to return such Jurors' Book, and the ballots for drafting such Jury Lists, to the Court to which by this Act he is required to return the same, or neglects or omits to perform any other duty required of him by this Act, or wilfully does anything inconsistent with the provisions of this Act;

On Deputy Clerks of Crown and Pleas altering Lists, &c.

2. Or, if any Deputy or Clerk of the Crown and Pleas makes, or causes to be made, any alteration whatever in the Rolls, Lists or panels in any Jurors' Book, or in any copy thereof deposited in his office, or wilfully certifies as true any copy of any Jurors' Book, or any Roll, List or panel therein, which is not a true copy thereof;

On Assessors not making and returning the assessment roll in proper time.

3. Or, if any Assessor of any Township, Village or ward neglects or omits to make out and complete his assessment roll for such Township, Village or ward, and to return the same to the office of the Clerk of such Township or Village, or of the City or Town in which any such ward is situated, or to the other office or place of deposit for such roll, on or before the first day of September of the year for which he is such Assessor, except in the cases provided for by section forty-four of "*The Assessment Act*;"

Rev. Stat. c. 180, s. 44.

On municipal officer not producing assessment roll as required.

4. Or, if any City, Town, Village or Township Clerk, or any Assessor, or other officer or person who, at the time of the annual meeting of the Selectors of Jurors for any City, Town, Village or Township, has the actual charge or custody of the assessment rolls or assessment roll of such City, Town, Village or Township for such year, neglects or omits to perform the duties required of him by the sixteenth section of this Act, as regards the production of such roll or rolls at the annual meeting of such Selectors, or the permitting such Selectors to have necessary access to the same for the purposes of their duty;

On Selectors of Jurors for wilful dereliction of duty.

5. Or, if any Selector of Jurors for any Township, Village or ward wilfully selects, ballots and reports as qualified and liable to serve as a Grand or Petit Juror any person who, according to the provisions of this Act, ought not to be so selected, balloted or reported, or takes any money or other reward for so selecting, balloting or reporting, or omitting to select, ballot or report any person whomsoever, or wilfully inserts in any such report a wrong description of the name, place of abode or addition of any one so selected, balloted and reported, or neglects or omits to complete his selection, ballot and report, and to deposit the same in the proper office on or before the fifteenth day of September of the year for which he acts as such Selector of Jurors;

6. Or, if any Clerk of the Peace, or his Deputy, when acting in performance of the duties required of him by this Act, neglects or omits to perform any duty required of him in the manner herein prescribed, or wilfully does anything inconsistent herewith ;

On Clerks of Peace for wilful dereliction of duty.

7. In all such cases, every such person so offending shall, for such offence, forfeit the sum of two hundred dollars, one moiety thereof to be paid over to the Treasurer of the County, and shall form part of the fund for the payment of Petit Jurors under this Act, and the other moiety thereof, with full costs, to any person who will sue for the same, in any Court of competent jurisdiction, by action of debt or information ; but nothing herein contained shall be construed to relieve any Assessor from the obligation of returning the assessment roll at an earlier period of the year, or from any penalty he may incur by not returning the same accordingly. C. S. U. C. c. 31, s. 174 ; 40 V. c. 7, *Sched. A.* (75).

Amount of penalty, and how to be applied.

**170.** Except as otherwise provided by the one hundred and forty-seventh section of this Act, all fines imposed under this Act by either of Her Majesty's Superior Courts of Law, or by any Court of Assize and Nisi Prius, Oyer and Terminer, Gaol Delivery, General Sessions of the Peace, or County Court, shall be levied and applied in the same manner as other fines imposed by this Act. C. S. U. C. c. 31, s. 175.

How pecuniary penalties shall be levied and applied.

**171.** All other penalties under this Act, for which no other remedy is given, may be recovered by summary proceeding before any Justice of the Peace having jurisdiction over the offence; and the said Justice may, on complaint, hear and examine witnesses on oath or affirmation, and determine the same, and if he sees fit may mitigate the penalty to the extent of a moiety thereof. C. S. U. C. c. 31, s. 176.

Recovery by summary proceeding.

Mitigation of penalty.

**172** Unless the penalty is forthwith paid upon conviction, such Justice shall, by warrant under his hand and seal, levy the same by distress and sale of the offender's goods and chattels; and for want of sufficient distress the offender shall be committed by warrant, under the hand and seal of such Justice, to the Common Gaol or House of Correction, for such term, not exceeding six months, as such Justice thinks proper, unless such penalty is sooner paid : and all penalties shall be paid to the Treasurer of the County. C. S. U. C. c. 31, s. 177.

Commitment for non-payment.

Application of penalties.

#### GENERAL PROVISIONS.

**173.** Nothing herein contained shall be construed to affect or alter any statute or law whereby the affirmation of any person belonging to certain religious societies, classes or descriptions of persons is allowed, or directed to be in all cases received and taken from such person in lieu of an oath. C. S. U. C. c. 31, s. 179.

Affirmations instead of oaths.



Certain allegations not necessary in setting out legal proceedings.

174. Wherever any legal proceeding in which a Jury was empanelled, is required to be set out, it shall not be necessary to specify that any particular person or persons who acted as Jurors made affirmation instead of oath, but it may be stated that they served as Jurymen, in the same manner as if no Act had passed for enabling persons to serve as Jurymen without oath. C. S. U. C. c. 31, s. 180.

## SCHEDULE OF FORMS.

### SCHEDULE "A."

(Section 23).

FORMS OF REPORT OF SELECTORS OF JURORS FROM ASSESSMENT ROLL.

REPORT of the Selection and Distribution of Jurors for the Township of Albion (or for the Ward of St. James, in the City of Toronto), in the County of York, for the year 18 , made at the Town (or City) Hall of the said Township (or City) by A. B., Town Reeve (or Mayor), C. D., Town (or City) Clerk, and E. F., G. H. and I. J., Assessors of the said Township (or Ward), on the day of , in the year 18 , pursuant to the directions of "*The Jurors' Act.*" (1)

#### FIRST DIVISION,

*For the Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
John Anderson .....	16	2	Esquire.
Peter Cameron .....	4	6	Yeoman.
William O'Leary .....	—	Oatlands	Gentleman.
Alfred Piper .....	17	1	Esquire.
&c.			

#### SECOND DIVISION.

*For the Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
William Adams .....	9	4	Gentleman.
Richard House .....	7	5	Yeoman.
Jacob Wyse .....	2	1	Tailor.
Allan Thomas .....	24	5	Esquire.
&c.			

## THIRD DIVISION.

*For the Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
David Boothe .....	11	7	Merchant.
George Sullivan .....	3	4	Esquire.
Nathan Lowe .....	6	1	Shoemaker.
Henry Grace .....	24	7	Yeoman.
&c.			

## FOURTH DIVISION.

*For the Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
George Gule .....	7	8	Tailor.
Samuel Jones .....	15	3	Yeoman.
William Carpenter .....	7	2	Esquire.
Thomas Hoole Rogers .....	11	1	Gentleman.
&c.			

We, the above-named Selectors of Jurors for the Township of Albion (*or as the case may be*), do hereby solemnly declare, each severally for himself, that we have made the Selection and Distribution of Jurors in this Report from the Assessment Roll of the said Township for the present year to the best of our judgment and information, pursuant to the directions of "*The Jurors' Act*," and that we have so made the same without fear, favour or affection of, to or for any person or persons whomsoever, gain, reward or hope thereof, other than the fees to which we are entitled under the provisions of the said Act.

Witness our hands and seals, the day and year last above written.

A. B.	[L. S.]	Town Reeve.
C. D.	[L. S.]	Town Clerk.
E. F.	[L. S.]	Assessor.
G. H.	[L. S.]	Assessor.
I. J.	[L. S.]	Assessor.

## SCHEDULE B.

(Section 24).

## FORM OF JURORS' BOOK.

The JURORS' BOOK for the County of York, for the year 18 . (1)

## 1.—ROLL OF GRAND JURORS

To serve in Her Majesty's Superior Courts (2) of Criminal Jurisdiction.

No. on Roll.	NAMES.	No. of Lot or House as in Report of Selectors.	Concession or Street, or unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 ALBION, (Township.)					
1	Anderson John.....	16	2	Esquire,		Exempted, having served on G. J. List, S. C. 18 .
2	Aylof Graham .....	9	4	Gentleman,		
3	Bosworth David .....	11	7	Merchant,		
4	Cameron Peter .....	4	6	Yeoman,		
	( <i>dec., to, say</i> )					
20	Young David.....	7	8	Tailor,	3	
	2 BROCK, (Township.)					
21	Allan Simon .....	21	7	Yeoman,		
22	Bolland George .....	5	12	Gentleman,	2	
	( <i>dec., to, say</i> )					
31	Wilkinson James.....	13	4	Esquire,		
32	Yates Edward .....	1	5	Yeoman,	144	
	3 YORKVILLE, (Village.)					
	4 ST. JAMES' WARD, (City of Toronto.)					
	( <i>dec., to, say</i> )					
	26 YORK, (Township.)					
503	Arthur Thomas.....	3	2 From Bay.	Yeoman,	1	
504	Bull Peter .....	14	1 E. Yonge St.	Yeoman,		

These are to certify that I have carefully compared the above Grand Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto, for the year one thousand eight hundred and , as such Reports remained with me as Clerk of the Peace on the fifteenth day of September in that year, and that such Grand Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Grand Jurors in Her Majesty's Superior Courts of Criminal Jurisdiction for such County.

Witness my hand, this  
hundred and

day of

, one thousand eight

E. F., Clerk of the Peace.

2.—THE GRAND JURY LIST

For the Superior Courts, (2) as selected in open Court, at a General Sessions of the Peace for the County, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, being the first day of the first General Sessions of the Peace for the County, held next after the tenth day of November in the said year, by C.D., Chairman of the said Court, and the undersigned Selectors, pursuant to the directions of "*The Jurors' Act.*"

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or unincorporated Village or Hamlet, as in Jurors' Roll.	Township, Village or Ward.	Additions.	No. on Roll.	No. of Panel.	Remarks.
1	Arthur Thomas ....	3	2 From Bay,	York,	Yeoman,	503	1	Served accordingly.
2	Bolland George ....	5	12	Brock,	Gentleman,	22	1	Omitted to attend altogether.
3	Young David .....	7	8	Albion,	Tailor,	20		
144	( <i>etc., to</i> ) Yates Edward .....	1	5	Brock,	Yeoman,	32	1	Served accordingly.

These are to certify that on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ instant, being the first day of the first General Sessions of the Peace for the County of \_\_\_\_\_, next after the tenth day of November in this year (5), the foregoing Grand Jury List for the Superior Courts for this County for the year one thousand eight hundred and \_\_\_\_\_, was in open Court duly selected, canvassed and transferred from the Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction for the same year, pursuant to the directions of "*The Jurors' Act.*"

Witness our hands, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

C. D. Chairman.  
E. F. Clerk of the Peace.  
G. H. Warden.  
&c., &c.

3.—GRAND JURY PANELS FOR THE SUPERIOR COURTS. (2)

(a) No. 1.

PANEL of Grand Jurors returned upon a Precept from the Honourable G. H., the Honourable I. J., [*&c.*] Her Majesty's Justices in that behalf, tested the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, for the return of twenty-four of such Jurors for the Sittings of Oyer and Terminer and General Gaol Delivery, to be held for this County on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, as drafted on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, at the office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff, in the presence of K. L. and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of "*The Jurors' Act.*"



No. of Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Arthur Thomas .....	3	2 From Bay,	York,	Yeoman,	1	
2	Bolland George .....	5	12	Brock,	Gentleman,	2	
	( <i>dc., to</i> )						
24	Yates Edward .....	1	5	Brock,	Yeoman,	144	

Witness our hands, the day and year last above written.

A. B. Sheriff.

K. L. J. P.

M. N. J. P.

(b) No. 2. (4) &c.

#### 4.—ROLL OF GRAND JURORS

To serve in Her Majesty's Inferior Courts (2) of Criminal Jurisdiction. (3)

No. on Roll.	NAMES.	No. of Lot or House, as in Report of Selectors.	Concession or Street, or unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 ALBION, (Township.)					
1	Acland White .....	16	2	Esquire,		Exempted, having served on G. J. List, S. C. 18
2	Adams William .....	9	4	Gentleman,		
3	Eswald David .....	11	7	Merchant,		
4	Hamilton Peter .....	4	6	Yeoman,		
	( <i>dc., to, say</i> )					
20	Large George .....	7	8	Tailor,	3	
	2 BROCK, (Township.)					
21	Ash Simon .....	21	7	Yeoman,		
22	Borland George .....	5	12	Gentleman,	2	
	( <i>dc., to, say</i> )					
31	Wilkins James .....	13	4	Esquire,		
32	Waters Edward .....	1	5	Yeoman,	144	
	3 MARKHAM, (Village.)					
	4 ST. JAMES' WARD, (City of Toronto.)					
	( <i>dc., to, say</i> )					
	26 YORK, (Township.)					
503	Astor Thomas .....	3	2 From Bay,	Yeoman,	1	
504	Peel Peter .....	14	1 E. Yonge St.	Yeoman,		

These are to certify that I have carefully compared the above Grand Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto, for the year one thousand eight hundred and \_\_\_\_\_, as such Reports remained with me as Clerk of the Peace on the fifteenth day of September in that year, and that such Grand Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Grand Jurors in Her Majesty's Inferior Courts of Criminal Jurisdiction for such County.

Witness my hand, this  
hundred and

day of

, one thousand eight

E. F. Clerk of the Peace.

5.—THE GRAND JURY LIST.

For the Inferior Courts, (2) as selected in open Court at a General Sessions of the Peace for the County, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, being the first day of the first General Sessions of the Peace for the County held next after the tenth day of November in the said year, by C. D., Chairman of the said Court, and other Selectors, pursuant to the directions of "*The Jurors' Act*."

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or unincorporated Village or Hamlet, as in Jurors' Roll.	Township, Village or Ward.	Additions.	No. on Roll.	No. of Panel.	Remarks.
1	Astor Thomas.....	3	2 From Bay,	York,	Yeoman,	503	1	Served ac-
2	Borland George ....	5	12	Brock,	Gentleman,	22	1	cordingly.
3	Large George .....	7	8	Albion,	Tailor,	20		Omitted to
	( <i>dec. to</i> )							attend al-
144	Waters Edward....	1	5	Brock,	Yeoman,	32	1	together.
								Served ac-
								cordingly.

These are to certify that on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ instant, being the first day of the first General Sessions of the Peace for the County of York next after the tenth day of November in this year (5), the foregoing Grand Jury List for the Inferior Courts for this County, for the year one thousand eight hundred and \_\_\_\_\_, was in open Court duly selected, canvassed and transferred from the Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction for the same year, pursuant to the directions of "*The Jurors' Act*."

Witness our hands, this  
hundred and

day of

, one thousand eight

C. D. Chairman.

E. F. Clerk of the Peace.

6.—GRAND JURY PANELS FOR THE INFERIOR COURTS. (2)

(a) No. 1.

PANEL 1: Grand Jurors returned upon a Precept from S. P. H. and K. L. M., Esquires, two of Her Majesty's Justices of the Peace in and for the County of York, tested

the                      day of                      , 18                      , for the return of twenty-four of such Jurors for the General Sessions of the Peace to be held for this County on                      , the                      day of                      , one thousand eight hundred and                      , as drafted on                      , the                      day of                      , one thousand eight hundred and                      , at the office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff, in the presence of K. L. and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of "*The Jurors' Act.*"

No. on Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Astor Thomas .....	3	2 From Bay,	York,	Yeoman,	1	
2	Borland George ....	5	12	Brock,	Gentleman,	2	
	( <i>etc., to</i> )						
24	Waters Edward ....	1	5	Brock,	Yeoman,	144	

Witness our hands, the day and year last above written.

A. B. Sheriff.

K. L. J. P.

M. N. J. P.

(b) No. 2. (4) &c.

#### 7.—ROLL OF PETIT JURORS

To serve in Her Majesty's Superior Courts (2) of Criminal and Civil Jurisdiction. (3)

No. on Roll.	NAMES.	No. of Lot or House, as in Report of Selectors.	Concession or Street, or unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 ALBION, (Township.)					
1	Parley Peter .....	16	2	Esquire,		
2	Alley Simon .....	21	7	Yeoman,	2	
3	Aikins William .....	25	3	Yeoman,		
4	Ashford Thomas .....	19	5	Yeoman,	3	
5	Adams George .....	5	5	Gentleman,	1	
6	Worth David .....	11	7	Merchant,	5	
7	Barclay John .....	9	2	Shoemaker,	4	
8	Cameron William .....	4	6	Yeoman,		Exempted,
9	Daniels George .....	22	11	Yeoman,	6	having
10	Small William .....	7	8	Tailor,	7	served on
	( <i>etc., to, say</i> )					P. J. List,
1060	Yarrolld George .....	14		Baker,	288	S. C. 18
	2 BROCK, (Township.)					
	<i>etc.</i>					

These are to certify that I have carefully compared the above Petit Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto, for the year one thousand eight hundred and , as such Reports remained with me as Clerk of the Peace on the fifteenth day of September of that year, and that such Petit Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and hable to serve as Petit Jurors in Her Majesty's Superior Courts of Criminal and Civil Jurisdiction for such County.

Witness my hand, this                      day of                      , 18 .

E. F. Clerk of the Peace.

### 8.—THE PETIT JURY LIST

FOR the Superior Courts, (2) as selected in open Court at a General Sessions of the Peace for the County, on                      , the                      day of                      , 18 , being the first day of the first General Sessions of the Peace for the County held next after the tenth day of November in the said year, by C. D., Chairman of the said Court, and E. F., the Clerk of the Peace, pursuant to the directions of "*The Jurors' Act.*"

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or unincorporated Village or Hamlet, as in Jurors' Roll.	Residence.	Additions.	No. on Roll.	No. of Panel.	Remarks.
1	Adams George ....	5	5	Albion,	Gentleman,	5		
2	Alley Simon .....	21	7	Albion,	Yeoman,	2	1	Served ac-
3	Ashford Thomas ...	2	19	Albion,	Yeoman,	4		cordingly.
4	Barclay John .....	19	8	Albion,	Shoemaker,	7		
5	Worth David .....	9	5	Albion,	Merchant,	6		
6	Daniel George .....	11	16	Albion,	Yeoman,	9		
	( <i>dc., to</i> )							
188	Yarroll George ....	14	9	Albion,	Baker,	1060	1	Attended, but made default.

These are to certify that on                      , the                      day of                      instant, being the first day of the first General Sessions of the Peace for the County of York next after the tenth day of November in this year (5), the foregoing Petit Jury List for the Superior Courts for this County for the year 18 , was in open Court duly selected, canvassed and transferred from the Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal and Civil Jurisdiction for the same year, pursuant to the directions of "*The Jurors' Act.*"

Witness our hands, this                      day of                      , 18 .

C. D. Chairman.

E. F. Clerk of the Peace.

### 9.—PETIT JURY PANELS

FOR THE SUPERIOR COURTS (2).

(a) No. 1.

PANEL of Petit Jurors returned upon a Precept from the Honourable G. H., the Honourable J. J., &c., Her Majesty's Justices, in that behalf tested the                      day of                      , one thousand eight hundred and                      , for the return of



forty-eight of such Jurors for the Sittings of Assize and Nisi Prius, Oyer and Terminer, and General Gaol Delivery, to be held for this County, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, as drafted on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, at the office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff, in the presence of K. L. and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of "*The Jurors' Act.*"

No. on Panel.	NAMES.	No. of Lot or House, as in Jurors' List.	Concession or Street, or unincorporated Village or Hamlet, as in Juror's List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Alley Simon..... ( <i>dec. to</i> )	21	7	Albion,	Yeoman,	2	
48	Yarrold George .....	14	9	Albion,	Baker,	288	

Witness our hands, the day and year last above written.

A. B. Sheriff.  
K. L. J. P.  
M. N. J. P.

(b) No. 2, (4) &c.

10.—ROLL OF PETIT JURORS

To serve in Her Majesty's Inferior Courts (2) of Criminal and Civil Jurisdiction. (3)

No. on Roll.	NAMES.	No. of Lot or House, as in Report of Selectors.	Concession or Street, or unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1. ALBION, (Township.)					
1	Alford Peter .....	16	2	Esquire,		
2	Adams Simon .....	21	7	Yeoman,	2	
3	Addis William .....	25	3	Yeoman,		
4	Ashton Thomas .....	19	5	Yeoman,	3	
5	Aylwin William .....	5	5	Gentleman,	1	
6	Brooks David .....	11	7	Merchant,	5	
7	Burley John .....	9	2	Shoemaker,	4	
8	Catty Peter .....	4	6	Yeoman,		
9	David George .....	22	11	Yeoman,	6	Exempt, having
10	Gule George .....	7	8	Tailor,	7	served on P. J. List, S. C. 18
	( <i>dec., to, say</i> )					
1060	Yold George .....	14	9	Baker,	288	
	2 BROCK, (Township.) &c.					

These are to certify that I have carefully compared the above Petit Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto for the year one thousand eight hundred and \_\_\_\_\_, as such Reports remained with me as Clerk

of the Peace, on the fifteenth day of September in that year, and that such Petit Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Petit Jurors in Her Majesty's Inferior Courts of Criminal and Civil Jurisdiction for such County.

Witness my hand, this

day of , 18 .

E. F. Clerk of the Peace.

### 11.—THE PETIT JURY LIST

FOR the Inferior Courts, (2) as selected in open Court at a General Sessions of the Peace for the County, on , the day of , one thousand eight hundred and , being the first day of the first General Sessions of the Peace for the County held next after the tenth day of November in the said year, by C. D., Chairman of the said Court, and E. F., Clerk of the Peace, pursuant to the directions of "*The Jurors' Act.*"

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or unincorporated Village or Hamlet, as in Jurors' Roll.	Residence.	Additions.	No. on Roll.	No. of Panel.	Remarks.
1	Aylwin William ...	5	5	Albion,	Gentleman,	5		
2	Adams Simon .....	21	7	Albion,	Yeoman,	2	1	Served ac-
3	Ashton Thomas ....	19	5	Albion,	Yeoman,	4		cordingly.
4	Burley John .....	9	2	Albion,	Shoemaker,	7		
5	Brooks David .....	11	7	Albion,	Merchant,	6		
6	Davis George .....	22	11	Albion,	Yeoman,	9		
	( <i>dec. to</i> )							
288	Yold George .....	14	9	Albion,	Baker,	1060	1	Attended but made default

These are to certify that on , the day of instant, being the first day of the first General Sessions of the Peace for the County of York next after the tenth day of November in this year, (5) the foregoing Petit Jury List for the Inferior Courts for this County for the year one thousand eight hundred and , was in open Court duly selected, canvassed and transferred from the Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal and Civil Jurisdiction for the same year, pursuant to the directions of "*The Jurors' Act.*"

Witness our hands, this

day of , one thousand eight hundred and

C. D. Chairman.

E. F. Clerk of the Peace.

### 12.—PETIT JURY PANELS FOR THE INFERIOR COURTS. (2)

#### (a) No. 1.

PANEL of Petit Jurors returned upon a Precept from S. B. H., and K. L. and M. N., Esquires, two of Her Majesty's Justices of the Peace in and for the County of York, tested the day of , 18 , for the return of forty-eight of such Jurors, for the General Sessions of the Peace to be held for this County, on , the day of , 18 , as drafted on , the day of , 18 , at the office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff, in the presence of K. L. and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of "*The Jurors' Act.*"

No. of Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Adams Simon .....	21	7	Albion,	Yeoman,	2	
	(&c., to)						
48	Yold George.....	14	9	Albion,	Baker,	288	

Witness our hands, the day and year last above written.

A. B. Sheriff.  
K. L. J. P.  
M. N. J. P.

(b) No. 2.

PANEL of Special Jurors returned upon a Writ of *Venire Facias Juratores*, out of the Court of Queen's Bench, in the case of N. O., Plaintiff, against P. Q., Defendant, tested (&c.) and returnable (&c.), as struck at the office of the Clerk of the Peace, in Toronto, on , the day of 18 , by A. B. Esquire, Sheriff, in the presence of R. S., Attorney for the Plaintiff, and T. A., Agent for the Attorney of the Defendant (or in the presence of R. S., Attorney for the Plaintiff, the Defendant's Attorney, though served with the appointment, not appearing), pursuant to the directions of "*The Jurors' Act*."

No. of Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on Grand Jurors' Rolls.	Remarks.
1	Abbott William.	11	9	Albion,	Gentleman,	I. C. 31	From G. J. Roll for S. C.
2	Wilkins James..	13	4	Brock,	Esquire,		for year 18 .
	(&c., to)						No. 10, the
16	Young David ...	7	8	Albion,	Tailor,	S. C. 20	G. J. Roll for this year being exhausted.

Witness my hand, the day and year last above written.

A. B., Sheriff.

(c) No. 3, (4) &c.

NOTES TO FORMS IN SCHEDULES "A" AND "B."

- (1.) *This Title to be placed at the head of each page or folio throughout the Book.*
- (2.) *So much of this Sub-Title as ends with this word, to be placed at the head of each page or folio of the Book appropriated to this class of entries.*
- (3.) *This Roll to be commenced on a new page or folio after leaving a sufficient number of leaves for the Jury List to be selected from the preceding Roll and the probable number of Panels that may be drafted from such List in the course of the year.*
- (4.) *The subsequent Panels following immediately may be commenced on the same page or folio on which the preceding one is closed.*
- (5.) *Or, if at a Special Sessions held under the authority of the fifty-seventh section of this Act, say, "Of a Special General Sessions of the Peace for the County of York, held for that purpose under the warrant of the Lieutenant-Governor," the foregoing Grand or Petit Jury List, &c., was in open Court, &c. And note that the words "the said year" in the first part, and the words "this year" in the latter part of the form, mean the same year, the General Sessions being now held in December in each year.*

## SCHEDULE C (Section 139).

PAID List for Petit Jurors who have attended "the Assizes" or "County Court and General Sessions of the Peace" (as the case may be) held for the County of \_\_\_\_\_, begun on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and ended on the \_\_\_\_\_ day of \_\_\_\_\_.

Name of Jurors.	Number of miles travelled in coming to Court.	Check of Attendance.								Amount to be paid to Juror.		Juror's signature acknowledging receipt of money.
		1st day.	2nd day.	3rd day.	4th day.	5th day.	6th day.	7th day.	8th day.	£	cts.	
John Just . . . . .	21	present	present	present	present	absent	present	present	present			
Charles Careless—												

I, \_\_\_\_\_, Sheriff of the County of \_\_\_\_\_, do hereby certify to the Treasurer of the said County, that the above is, to the best of my knowledge, a correct return of the number of miles travelled by each Juror in coming to the said Court, a true check of the number of days every such Juror attended the Court, and the just sum to which every Juror on the above list is entitled.

A. B., Sheriff.



## 4. PROCEDURE IN CIVIL MATTERS.

## CHAPTER 49.

## An Act for the better Administration of Justice in the Courts of Ontario.

Short title, s. 1.

General Jurisdiction of the Courts, ss. 2-20.

Courts of Law and Equity to be auxiliary, s. 2.

Non-jury cases may be tried by Court of Chancery, s. 3.

Purely money demands, though equitable, may be tried at Law, ss. 4, 5.

Costs in such cases, s. 6.

Formal objections not to prevail, s. 7.

Amendments, s. 8.

Appointment of representatives to deceased parties, s. 9.

Summary investigation of fraudulent conveyances to defeat creditors, ss. 10-16.

Examination of judgment debtors, ss. 17-20.

Transfer of cases from Chancery to Common Law, and *vice versa*, ss. 21-30.

Trial of Superior Court cases, in County Courts and County Court cases at Assizes, ss. 31-44.

General Rules and Orders, ss. 45-50.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

**1.** This Act may be cited as "*The Administration of Justice Act.*"

## GENERAL JURISDICTION OF THE COURTS.

The Courts to be auxiliary to each other.

**2.** For the more speedy, convenient and inexpensive administration of justice in every case, the Courts of Law and Equity shall be, as far as possible, auxiliary to one another respectively. 36 V. c. 8, s. 1.

Issues of fact at law to be tried without a jury may be tried in Chancery.

**3.** Any issue of fact joined in an action depending in either the Court of Queen's Bench or the Court of Common Pleas, and which, according to the course and practice of the said Courts, may be tried at *Nisi Prius* by a Judge without a jury, may be entered for trial at any Sittings of the Court of Chancery held for the hearing of causes, at the County Town of the County where the venue is laid. 37 V. c. 7, s. 29.

2. The record shall, in such cases, be passed by the Clerk or Deputy Clerk of the Crown, as the case may be, and shall be entered for trial with the Registrar or Deputy Registrar, as the case may be; and the practice to be followed in respect of notice of trial, and entering the record in causes so entered for trial at any Chancery Sittings, shall be as nearly as possible that of the said Courts of Common Law. 37 V. c. 7, s. 30.

Entry of record and practice in above cases.

3. The Judge of the Court of Chancery before whom any trial is had under the foregoing provisions shall, upon the trial, enforce the same rules as to evidence, and the evidence shall be given in the same manner, and the procedure generally shall be the same, as at a trial at the Assizes; and the postea shall be *mutatis mutandis* in the same form as that applicable to trials at the Assizes; and any Judge of the Court of Chancery so presiding at the trial of an issue joined in an action at law, shall have all the powers of a Judge sitting at the Assizes. 37 V. c. 7, s. 31.

In the above cases, the evidence, procedure, postea, and powers of the Chancery Judge.

4. Any person having a purely money demand may proceed for the recovery thereof by an action at Law, although the plaintiff's right to recover may be an equitable one only, and no plea, demurrer or other objection on the ground that the plaintiff's proper remedy is in the Court of Chancery, shall be allowed in such action; but the Court shall have the discretionary power hereinafter mentioned to transfer Equity matters to the Court of Chancery where the ends of justice so require. 36 V. c. 8, s. 2.

A purely money demand may be sued for at law, though the right be equitable only.

5. For the purpose of carrying into effect the objects of this Act, and for causing complete and final justice to be done in all matters in question in any action at Law, the Court or a Judge thereof, according to the circumstances of the case, may, at the trial or at any other stage of an action or other proceeding, pronounce such judgment, or make such order or decree as the equitable rights of the parties respectively require, and may make such rule or order as to adding third persons as parties to any proceeding, striking out parties, or treating parties named plaintiffs as defendants, or parties named defendants as plaintiffs, and as to costs, and may direct such inquiries to be made and accounts to be taken as seem reasonable and just; and may as fully dispose of the rights and matters in question as a Court of Equity could. 36 V. c. 8, s. 8.

The Court or Judge may, in any action, make such order or decree as equity requires.

6. No Master, Clerk or other Taxing Officer shall tax or allow to any party suing for an equitable right at Law, or for a legal right in Equity, nor shall such party be entitled to recover by reason thereof, any more costs than would have been taxed or allowed, or recoverable if the equitable right had been sued for in Equity, or the legal right had been sued for at Law; and the opposite party shall be entitled without any order for that purpose, to set off against the costs of the party suing as

Costs where a legal right is prosecuted in equity, or an equitable right at law.

aforesaid, the additional costs, if any, incurred by such opposite party, through the change of jurisdiction; but this section shall not apply where the Judge otherwise orders. 36 V. c. 8, s. 48.

Formal objections.

7. No proceeding either at Law or in Equity shall be defeated by any formal objection. 36 V. c. 8, s. 49.

Amendments.

8. At any time during the progress of any action, suit or other proceeding at Law or in Equity, the Court or a Judge may, upon the application of any of the parties, or without any such application, make all such amendments as may seem necessary for the advancement of justice, the prevention and redress of fraud, the determining of the rights and interests of the respective parties, and of the real question in controversy between them, and best calculated to secure the giving of judgment according to the very right and justice of the case

2. Any such amendment may be made, whether the necessity for the same is or is not occasioned by the defect, error, act, default or neglect of the party applying to amend.

3. All such amendments shall be made upon such terms as to payment of costs and otherwise, as to the Court or Judge ordering the same to be made seems just. 36 V. c. 8, s. 50.

If a deceased person has no personal representative, proceedings may go on, or the Court may appoint a representative.

9. Where, in any suit or other proceeding, it is made to appear that a deceased person who was interested in the matters in question has no legal personal representative, the Court or a Judge may either proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent such estate for all the purposes of the suit or other proceeding, on such notice to such person or persons, if any, as the Court thinks fit, either specially or by public advertisement, and notwithstanding that the estate in question may have a substantial interest in the matters, or that there may be active duties to perform by the person so appointed, or that he may represent interests adverse to the plaintiff, or that there may be embraced in the matter an administration of the estate whereof representation is sought; and the order so made and any orders consequent thereon, shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly appointed legal personal representative of such person, and such legal personal representative had been a party to the suit or proceeding, and had duly appeared and had submitted his rights and interests to the protection of the Court. 39 V. c. 7, s. 23.

#### SUMMARY INQUIRIES INTO FRAUDULENT CONVEYANCES.

The Court or a Judge may at the instance of any judgment creditor call on the debtor

10. Where a judgment creditor or a person entitled to money under a rule, decree or order at Law or in Equity, alleges that the debtor or person who is to pay has made a conveyance of his lands which is void, as being made to delay,

hinder or defraud creditors or a creditor, it shall not be necessary to file any bill in Equity for the purpose of setting aside such conveyance, but the Court or a Judge in Chambers may, upon the application of the judgment creditor, call upon the judgment debtor or person who is to pay, and the persons to whom the conveyance has been made, or who have acquired any interest thereunder, to show cause why the lands embraced therein, or a competent part thereof, should not be sold to realize the amount to be levied under the execution. 36 V. c. 8, s. 35.

and his grantee, &c., to show cause why lands conveyed by fraudulent grant should not be sold.

**11.** Where any judgment creditor in an action at Law, or a person entitled under a rule, decree or order as aforesaid, alleges that the debtor or person to pay is entitled to or has an interest in any land which cannot at present be sold under legal process, but could be rendered available in Equity for satisfaction of the debt, the Court or a Judge in Chambers may, upon the application of the creditor, call upon the debtor or person who is to pay, and the trustee or other person having the legal estate in the land in question, to show cause why the said land or the interest therein of the debtor or the person who is to pay, or a competent part of the said land, should not be sold to realize the amount to be levied under the execution. 36 V. c. 8, s. 36.

The Court or a Judge may call on a judgment debtor, &c., to show cause why his equitable interests should not be sold to pay execution.

**12.** Upon any application under either of the two preceding sections, such proceedings shall be had, either in a summary way, or by the trial of an issue, or by inquiry before an officer of the Court, or under the twenty-sixth section of this Act, or by a bill in Equity, or otherwise, as the Court or Judge may deem necessary or convenient for the purpose of ascertaining the truth of the matters in question, and whether the lands or the debtor's or other person's interest therein are in Equity liable for the satisfaction of the execution; but if in a case in a County Court there is a dispute as to material facts, and the value of the land or the debtor's or other person's interest therein appears to be over four hundred dollars, the Court or Judge shall direct the trial of an issue in one of the Superior Courts, and may name the County in which the trial is to take place, subject to any order that the Superior Court or a Judge thereof may see fit to make in that behalf. 36 V. c. 8, s. 37.

Proceedings after application under the two prior sections.

Cases in County Courts.

**13.** In County Court cases the application under the tenth and eleventh sections of this Act shall be made to the County Court (or to a Judge of a County Court) of the County or Union of Counties in which the lands to which the application relates are situate, unless the said Court or Judge upon the hearing of such application, deems it more convenient and more conducive to the ends of justice to order, and orders, that the proceedings be had and taken in the Court or before a Judge of the Court, from which the execution issued, in which case the Clerk of the County Court of the

Application to be made to the Judge of the County in which the lands are situate in County Court cases.



County in which the land lies shall transmit the papers filed with him, together with the order of transference, to the Clerk of the County Court from which the execution issued. 36 V. c. 8, s. 38.

If lands or interest of debtor found liable to sale, an order to be made specifying the same.

**14.** Where in a summary way or, upon the trial of any issue, or as the result of any inquiries under the four preceding sections, any land, or the interest of any debtor or other person therein, is found liable to be sold, an order shall be made by the Court or Judge, declaring what land or what interest therein is liable to be sold; and such order shall be a sufficient warrant to the proper Sheriff or other officer to proceed with the sale of the said land and interest. 36 V. c. 8, s. 39.

Sale by Sheriff under such order to have the same effect as under legal process.

**15.** The sale and conveyance by the Sheriff or other officer in pursuance of such order, shall have the same effect as such sale and conveyance would heretofore have had if the land so sold or the party's interest therein had been saleable under ordinary legal process. 36 V. c. 8, s. 40.

Rule or order under ss. 10, 11, or 13 may be registered.

**16.** Any rule or order *nisi*, or summons to show cause, granted upon an application under sections ten, eleven, or thirteen, may contain a description of the land in question, and may, upon production of the rule or order *nisi* or summons or a duplicate thereof, without proof of signature, be registered in the same manner and with the same effect as a *lis pendens* may now be registered, in the Registry Office for the County or other Registration Division in which such lands or any part of them are situate, and in case the said rule or order *nisi* or summons is discharged in whole or in part, the rule or order discharging the same, or a duplicate thereof, may be registered in like manner. 40 V. c. 7, *Sched. A.* (76).

#### EXAMINATION OF JUDGMENT DEBTORS.

Judgment creditor may apply to have his judgment debtor examined as to his property, etc.

**17.** In case any party whether plaintiff or defendant has obtained a judgment in any Court in Ontario, whatever the cause of action for which the suit was brought, such party, or any person entitled to enforce such a judgment, may apply to such Court or to any Judge having authority to dispose of matters arising in such Court, for a rule or order that the judgment debtor shall be orally examined upon oath before the Clerk of the Crown, or before the Judge or Clerk of the County Court within the jurisdiction of which such debtor resides, or before any other person to be named in such rule or order, touching his estate and effects, and as to the property and means he had when the debt or liability which was the subject of the action in which the judgment has been obtained against him was incurred, and as to the property and means he still has of discharging the said judgment, and as to the disposal he may have made of any property since contracting such debt or incurring such liability. C. S. U. C. c. 24, s. 41; 27-28 V. c. 25, s. 1. See also *Rev. Stat. c. 50, s. 304.*

**18.** In case such debtor does not attend as required by the said rule or order, and does not allege a sufficient excuse for not attending, or if attending, he refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination that such debtor has concealed or made away with his property in order to defeat or defraud his creditors or any of them such Court or Judge may order such debtor to be committed to the Common Gaol of the County in which he resides for any term not exceeding twelve months; or such Court or Judge may, by rule or order, direct that a writ of *capias ad satisfaciendum* may be issued against such debtor, and a writ of *capias ad satisfaciendum* may thereupon be issued upon such judgment, or in case such debtor is at large upon bail, such Court or Judge may make a rule or order for such debtor's being committed to close custody; and the Sheriff, on due notice of such rule or order, shall forthwith take such debtor and commit him to close custody until he obtains a rule of Court or a Judge's order for again allowing him to go out of close custody, on giving the necessary bond in that behalf, or until he is otherwise discharged in due course of law. C. S. U. C. c. 24, ss. 41 & 35.

Committal of debtor for non-attendance, refusal to answer, answering unsatisfactorily, etc.

#### *Examination of Officers of Corporations after Judgment.*

**19.** In case any person has obtained a judgment in any Court in Ontario, against a body corporate, or has obtained a rule or order for the payment of money against a body corporate, such person may apply to the Court, or to any Judge having authority in the premises, for a rule or order, that any one or more of the officers of such body corporate (to be named in such rule or order), shall be orally examined upon oath before a Judge or any other person (to be named in such rule or order), touching the names and residences of the stock-holders in said body corporate, the amount and particulars of stock held or owned by each stock-holder, and the amount paid thereon; also as to any and what debts are owing to the said body corporate; and as to the estate and effects of the body corporate; and as to the disposal made by the body corporate of any property since contracting the debt or liability in respect of which judgment, or rule or order for the payment of money was obtained; and the Court or Judge may make such order for the examination of such officer or officers, and for the production by him or them, of any books or documents, as may seem fit; and in case any such officer does not attend as required by the said rule or order, and does not show a sufficient excuse for not attending, or if attending he refuses to disclose any of the matters in respect of which he may be examined, such Court or Judge may order such officer to be committed to the Common Gaol of the County in which he resides, for any term not exceeding six months. 40 V. c. 8, s. 17.

Examination of officers of corporations by judgment creditors.

Decrees, etc., in equity for payment of money to be deemed judgments.

**20.** Every decree, rule or order of the Superior Courts of Law and Equity and of the County Courts directing payment of money or of costs, charges or expenses, shall, so far as it relates to such money, costs, charges, or expenses, be deemed a judgment, and the person to receive payment a creditor, and the person to make payment a debtor, within the meaning of the three next preceding sections of this Act. C. S. U. C. c. 24, s. 15.

Person having carriage of the decree, etc., to be deemed the person to receive payment.

**2.** In case a decree or order in Chancery directs the payment of money into Court, or to the credit of any cause, or otherwise than to any person, the person having the carriage of the decree or order, so far as relates to such payment, shall be deemed the person to receive payment within the meaning of the preceding subsection. C. S. U. C. c. 24, s. 20.

#### TRANSFER OF CASES FROM CHANCERY TO COMMON LAW COURTS AND VICE VERSA.

##### *From Chancery to Law.*

No objection to a suit in Chancery that it should be brought at law; but the suit may be transferred to law.

**21.** The Court of Chancery, in any suit or other proceeding instituted in that Court, shall have jurisdiction in all matters which would be cognizable in a Court of Law; but in case, at any stage of a cause in Chancery, it appears to the Court or a Judge thereof that the suit or proceeding may for any reason be more conveniently, expeditiously or inexpensively carried on or dealt with in a Court of Law, the Court of Chancery or a Judge thereof may order the suit or proceeding to be transferred to such one of the Courts of Common Law as the said Court or Judge thinks proper; and such order may be made by such Court or Judge *sua sponte*, or upon the application of either party to the Court or Judge on notice to the other parties interested, and may be made at any stage of the suit or proceeding; and the Court or Judge may make any order as to costs which seems reasonable. 36 V. c. 8, s. 32; 40 V. c. 7, *Sched. A.* (77). *See also Rev. Stat. c. 40, s. 86.*

Transmission of papers, &c on order to transfer to law.

**22.** Where an order is made under the foregoing section the proper officer of the Court of Chancery shall annex together all the pleadings and papers filed with him, and transmit the same, together with the order of transference or a copy thereof, to such office of the Court of Common Law as the order directs. 36 V. c. 8, s. 33.

##### *From Law to Chancery.*

Cases may be transferred to the Court of Chancery.

**23.** If it appears to a Court of Common Law or a Judge thereof that any equitable question raised in any action or other proceeding at Law, cannot be dealt with by a Court of Law so as to do complete justice between the parties, or may for any other reason be more conveniently dealt with in Equity, the Court or Judge may order the action or proceeding to be transferred to the Court of Chancery; and such order of transference may be made by the Court or Judge *sua sponte*, or upon the application of either party on notice to the other parties interested, and may be made at any stage of the action or other proceeding. 36 V. c. 8, s. 9; 40 V. c. 7, *Sched. A.* (78).

**24.** Where an order is made under the foregoing section, the proper officer of the Court of Common Law shall annex together all pleadings and papers filed with him, and transmit the same, together with the order of transference or a copy thereof, to such officer of the Court of Chancery as the order directs. 36 V. c. 8, s. 10.

Proceedings on transfer to Chancery.

*Powers of Court to which transfer is made.*

**25.** Where a transfer has been made under either the twenty-first or the twenty-third section of this Act, the suit, action or other proceeding shall thereafter proceed in the Court to which it has been transferred; and the Judges of such Court and the officers thereof shall have the same powers and perform the same duties in relation thereto, and the practice and orders of such Court shall in all respects (or as nearly as may be) apply as if the suit had been originally instituted as an action, suit or proceeding in such Court; but no further or other pleadings shall be necessary than the original pleadings in the Court from which such suit, action or proceeding was transferred, unless specially ordered by the Court or Judge. 36 V. c. 8, s. 34.

On a transfer made to a Court of Law or Equity, practice, powers, &c.

*References from Courts of Law.*

**26.** Where, in the opinion of a Court of Common Law or a Judge thereof, it is necessary or proper in any action to take accounts or make inquiries, which cannot so conveniently or properly be taken or made under the existing practice at Law, or by the means now available for the said Courts, as they might be in Chancery, the Court or Judge may order such accounts and inquiries to be taken and made by the Master or any of the local Masters of the Court of Chancery, instead of ordering a transference of the suit generally to the said Court of Chancery. 36 V. c. 8, s. 11.

Accounts may be taken and inquiries made by a Master on an order.

**27.** Where an order is made under the preceding section, the Master to whom the reference is directed shall proceed therein, and all the orders of the Court of Chancery as to the powers of the Master, and as to the proceedings in the Master's office, shall apply thereto, as if the reference had been made by an order of the Court of Chancery. 36 V. c. 8, s. 12.

Power of the Master on such order.

**28.** Where the Master has made his report pursuant to such order, the same shall be filed with the officer of the Court with whom the pleadings are filed; and the report shall, without an order confirming the same, become absolute at the expiration of fourteen days after the filing thereof, unless previously appealed from, but the Court or a Judge may, under special circumstances, allow an appeal after the fourteen days. 36 V. c. 8, s. 13.

Master's report to be filed.

When it shall become absolute.

**29.** The appeal from a report referred to in the preceding section shall be to a Judge in Chambers or to the Court in

Appeal from report.



Term ; but when the appeal is taken to the Court in Term, the notice of appeal shall be returnable not later than the fourth day of the Term next after the filing of the report. 36 V. c. 8, s. 14.

*Costs on Transfers from County Courts.*

On transfer from a County Court, costs to be taxed on lower scale.

**30.** Where any action is transferred under section twenty-three of this Act or a reference is directed under section twenty-six of this Act, from a County Court, the fees and disbursements shall be paid, and the attorney's costs taxed, according to the lower scale of fees in the Court of Chancery. 36 V. c. 8, s. 15.

TRIAL OF SUPERIOR COURT CASES IN COUNTY COURTS, AND  
COUNTY COURT CASES AT ASSIZES.

Certain cases in Superior Courts may be tried in the County Court of the County in which the venue is laid.

**31.** All issues of fact and assessments of damages in the Superior Courts of Common Law relating to debt, covenant and contract, where the amount is liquidated or ascertained by the signature of the defendant, may be tried and assessed in the County Court of the County where the *venue* is laid, if the plaintiff desires it, unless a Judge of such Superior Court otherwise orders, and upon such terms as he deems meet.

2. In such case the record shall be made up, and entered as in other cases, except that an entry shall be made therein, and in the subsequent proceedings in the words or to the effect of Form 1. in the Schedule to this Act, in place of the *venire facias* ; and the trial shall take place in the same way as in ordinary cases in such County Court ; and in the roll the *postea* shall be entered in the words or to the effect of Form 2. in the said Schedule. 32 V. c. 6, s. 17 (1), (4).

Certain cases in the Superior Courts of Law may be sent to be tried at the County Court of the County in which the action is brought.

3. In any action depending in either of Her Majesty's Superior Courts of Common Law, in which the amount of the demand is ascertained by the signature of the defendant, and in any action for any debt in which a Judge of either of the said Superior Courts is satisfied that the case may safely be tried in a County Court, any Judge of either of the said Superior Courts may order that such case shall be tried in the County Court of the County where such action was commenced, and such action shall be tried there accordingly, and the record shall be made up as in other cases ; and the order directing the case to be tried in the County Court shall be annexed to the record ; and the trial shall take place in the same way as in ordinary cases in such County Court. 23 V. c. 42, s. 4.

Proceedings in such case.

By order County Court cases may be tried at Assizes.

**32.** By the order of a Judge of either of the Superior Courts of Law, made upon such terms as the Judge may consider just, the issues of fact and assessment of damages in any action pending in a County Court may be tried and assessed at the Sittings of Assize and Nisi Prius for any County. 37 V. c. 7, s. 56.

2. In such cases the record shall be made up and entered *Postea*, and the case tried as in ordinary cases, and the *postea* shall be entered in the roll in the words or to the effect of Form 3. in the Schedule to this Act. 32 V. c. 6, s. 17 (2), *last part*.

**33.** In any of the cases in the two next preceding sections mentioned the notice of trial or assessment of damages shall state that the cause will be tried, or the damages assessed, at such Sittings according to the fact; and in cases in the Superior Courts, where the trial or assessment is intended to be had in the County Court, under subsection one of the thirty-first section, the notice of trial or assessment shall be served ten clear days before the Sittings of such County Court. 32 V. c. 6, s. 17 (3).

Notice of trial, etc., in such cases.

**34.** Nothing herein contained shall prevent a Judge of the Court in which the action is brought, or, after the record is entered for trial or assessment, the Judge before whom the trial or assessment is intended to be had, from entertaining applications to postpone such trial or assessment. 32 V. c. 6, s. 17 (3).

Trials may be postponed.

**35.** Subject to the provisions herein and in sections two hundred and eighty-five and two hundred and eighty-six of "*The Common Law Procedure Act*" contained, judgment in any of the said cases may be entered on the fifth day after verdict rendered or damages assessed, unless the Judge who tried the cause certifies on the record, under his hand, that the case is one which, in his opinion, should stand to abide the result of a motion that may be made therein in Term, or unless a Judge of one of the Superior Courts otherwise orders; but in any such case the Judge may certify for immediate execution. 23 V. c. 42, s. 4; 32 V. c. 6, s. 17 (4).

How record made up and judgment entered. Rev. Stat. c. 50.

**36.** Any motion to be made in respect to the trial, verdict or assessment of damages in a Superior Court case tried or assessed at the Sittings of any County Court shall be made in the Superior Court in which the action was brought. 23 V. c. 42, s. 4; 32 V. c. 6, s. 17 (4).

Motions against verdict in Superior Court cases tried in County Courts.

**37.** Any motion to be made in respect to the trial, verdict or assessment of damages in any County Court cause had, tried or assessed at any Sittings of Assize and Nisi Prius, shall be made, heard and determined in such one of the Superior Courts of Law at Toronto as the party moving or applying elects, and according to the practice of that Court; and any rule or order made in such cause by such Court shall be valid and binding. 32 V. c. 6, s. 17 (5); 33 V. c. 7, s. 8.

Motion against verdict, etc., in County Court cases tried at Assizes

2. The decision of the Superior Court of Law at Toronto, on any motion made under this section, shall be final, and shall not be subject to appeal to the Court of Appeal. 33 V. c. 7, s. 5.

Decision under preceding subsection to be final.

Powers of Judge of Assize as to County Court causes tried before him.

**38.** In any action in the County Court entered for trial at any Sittings of Assize and Nisi Prius, the Judge presiding at the Sittings shall have the same powers as to amendment of the record, adding and amending pleadings, putting off the trial, reference to arbitration, and making the cause a *remanet*, and otherwise dealing with the cause and proceedings therein, as if the action had been commenced in a Superior Court of Common Law. 33 V. c. 7, s. 1.

When such Judge marks record as a *remanet*, etc., it may be tried at subsequent sitting or Assizes.

**39.** Wherever the said Judge endorses on the record in any such action the word "*Remanet*," and adds any words to the effect following: "*And the within cause may be entered and tried at any County Court or Assizes*," such cause may be entered at any subsequent Sittings of the County Court, or of Assize and Nisi Prius, without any further entry or suggestion whatever relative thereto, and may be tried and disposed of in the same way as any other case entered at such Sittings; and in such case an entry shall be made in the record to the effect of Form 4 in the Schedule to this Act, and the *postea* shall then be adapted to the finding of the issues, as they may be tried and determined before a Judge or a jury in the County Court, or at the Sittings of Assize and Nisi Prius. 33 V. c. 7, ss. 2 & 3.

Powers of County Court as to awards when Judge of Assize refers to arbitration, &c.

**40.** Wherever any such cause is referred by the presiding Judge at such Sittings, the County Court in which the action is brought, and the Judge thereof, shall have the same power to enforce any award, report or certificate made on the reference, and to make rules and orders upon appeals therefrom and motions relating thereto, as if the order referring the case had been made by the County Judge. 33 V. c. 7, s. 4.

Books for Judge's notes of trial, etc.

**41.** The Clerks of the several County Courts shall provide books in which the Judges sitting in the Courts of Assize and Nisi Prius, where cases brought in any County Court are tried or assessed under this Act, may enter their notes of such trials and assessments; and such books, immediately after such trials or assessments, shall be returned to and remain in the offices of such Clerks. 32 V. c. 6, s. 17 (6).

Certified copy of notes of cases,

**42.** On the application of any of the parties, the County Court Clerks shall, at the cost of such party, forward to the Clerk of the Crown and Pleas at Toronto of such of the Superior Courts as such party designates, a certified copy of the Judge's notes of the trial or assessment of any such cases, together with the record and exhibits, to enable such Superior Court properly to dispose of any application made, or to be made, in or respecting such cases. 32 V. c. 6, s. 17 (7).

Costs in such cases,

**43.** The costs on all such proceedings in the said several Courts shall be the usual costs of such cases in the Court in which the action was brought. 32 V. c. 6, s. 17 (8).

**44.** The jury fees and the fees and charges payable and per- Fees to officers.  
taining to officers of the County Court, upon all actions, suits  
or proceedings brought in the County Courts, and tried or as-  
sessed in the Superior Courts, shall be chargeable and paid as  
if the same were being tried or assessed in the County Courts;  
and no other fees shall be chargeable thereon, and the Clerk  
of the County Court shall be entitled to receive and take  
such part thereof as pertains to him, to his own use. 32 V. c.  
6, s. 8.

GENERAL RULES AND ORDERS.

**45.** The Judges of the Superior Courts of Common Law, or General Rules  
and Orders as  
to practice and  
procedure in  
Superior  
Courts of Law.  
shall four of them, of whom the Chief Justices shall be two,  
shall have power in Term or Vacation to make General Rules  
or Orders from time to time for the effectual execution of  
this Act and of all other Acts now or hereafter in force re-  
specting the said Courts or relating to civil procedure in Courts  
of Common Law, and for regulating the practice and pro-  
cedure of said Courts, and of the County Courts, including  
(but without restricting the generality of the above enactment)  
the particulars following :— In County  
Courts.

1. The nature and form of the process and pleadings and Forms of pro-  
cess and  
pleadings.  
the practice generally, on petitions of right and informations,  
and in suits or other proceedings instituted by or on behalf of  
the Crown as well as in other cases ;

2. The taking, publishing, using and hearing of testimony, Evidence.  
the examination of the parties to a suit upon their oath, *viva*  
*voce* or otherwise ;

3. The allowance and amount of costs, and the fees to Costs.  
be taken by Counsel, Attorneys, Sheriffs, Coroners, and other  
officers of the said Courts ;

4. The time and mode of pleading in the said Courts and Time and mode  
of pleading,  
&c.  
the mode of entering and transcribing pleadings, judgments  
and other proceedings in actions at law ; the time and  
manner of objecting to errors in pleadings and other proceed-  
ings ; and the mode of verifying pleas and obtaining final  
judgment without trial in certain cases ;

5. The manner of justifying and perfecting bail when taken Justification of  
bail taken by  
Commission-  
ers ;  
by Commissioners of either of the said Superior Courts of  
Law : the notices to be given previously to justification ; the  
attendance of bail before a Commissioner or a Judge ; and the  
affidavits or examinations to be required ;

6. The government and conduct of the officers of the said Duties of  
Officers :  
Courts in and relating to the distribution and performance



of the duties and business to be done and performed by them ;

Other matters. 7. And every other matter deemed expedient for the better attaining the ends of justice, advancing the remedies of suitors, and carrying into effect the provisions of such Acts as aforesaid. See 40 V. c. 8, s. 15 ; C. S. U. C. c. 21, ss. 8-12 ; C. S. U. C. c. 22, ss. 332-339, 341 ; C. S. U. C. c. 24, s. 22 ; C. S. U. C. c. 26, s. 15 ; C. S. U. C. c. 29, s. 21 ; C. S. U. C. c. 42, s. 34 ; 23 V. c. 45, s. 9 ; 32 V. c. 33, s. 45 ; 35 V. c. 13, s. 16 ; 35 V. c. 14, s. 10 ; 36 V. c. 8, s. 51 ; 37 V. c. 7, s. 53.

Rules or Orders may be suspended, varied, &c. 46. The said Judges may from time to time suspend, repeal, vary or revive any such General Rules or Orders ; but no such Rule or Order shall have the effect of altering the principles or rules of decision of the Courts. 40 V. c. 6, s. 15, *and Acts supra*.

Court of Chancery to have like power. 47. The Court of Chancery shall have the like power with regard to any Acts relating to that Court, and in regard to the practice and procedure in suits and matters therein. 40 V. c. 8, s. 15. See also C. S. U. C. c. 12, s. 75 ; C. S. U. C. c. 24, s. 23 ; 28 V. c. 17, s. 11 ; 29-30 V. c. 39, s. 3 ; 32 V. c. 6, s. 4 (2) ; 32 V. c. 33, s. 45 ; 36 V. c. 8, s. 51 ; 37 V. c. 7, s. 53.

Immediate effect of Rules. 48. Every such Rule or Order shall, immediately upon the same being made, be of the same force and effect as if the provisions contained therein, had been expressly enacted by the Legislature. 40 V. c. 8, s. 15.

Superior Court rules to extend to County Courts. 49. All Rules and Orders of the Superior Courts of Common Law, made after the tenth day of June one thousand eight hundred and fifty-seven, or after this Act takes effect, shall (unless the contrary is expressed therein) extend to the several County Courts. C. S. U. C. c. 22, s. 340.

Power of the Courts to make occasional rules not restrained. 50. Nothing herein contained shall restrain the authority or limit the jurisdiction of the said Courts or of the Judges thereof, to make Rules or Orders, or otherwise to regulate and dispose of the business therein. C. S. U. C. c. 22, s. 337.

---

## SCHEDULE.

### FORM 1.

(Section 31.)

ENTRY TO BE MADE IN THE RECORD WHERE THE PLAINTIFF DESIRES TO HAVE A SUPERIOR COURT CASE TRIED AT THE SITTINGS OF A COUNTY COURT.

And the Plaintiff, in order to expedite proceedings in this case, having

elected to try the issues (*or assess the damages, or as well to try the issues as to assess the damages, as the case may be*) at the Sittings of the County Court of the County of                      to be held at                      in the said County, on the                      day of                      , 18                      , the said issues will be tried (*or the said damages will be assessed, or both, as the case may be*) at the said Sittings accordingly.

---

FORM 2.

(Section 31.)

ENTRY IN POSTEA WHERE A SUPERIOR COURT CASE HAS BEEN TRIED AT THE SITTINGS OF A COUNTY COURT.

And the Jury (*or Judge*) at the said County Court found that (*stating the finding on the issues,*) *or* and the Jury (*or Judge*) at the said County Court assessed the damages of the Plaintiff at                      over and above his costs ; therefore it is considered, &c. (*as the case requires.*)

---

FORM 3.

(Section 32.)

POSTEA WHERE A COUNTY COURT CASE HAS BEEN TRIED AT ASSIZES.

Afterwards the Plaintiff having, pursuant to an order of the Honourable Mr. Justice                      (*or as the case may be*) made in this case on the day of                      18                      , brought this case down for trial at the Sittings of Assize and Nisi Prius holden at                      in and for the County of                      on the                      day of                      18                      , the Jury (*or the presiding Judge before whom the issues therein were tried without a Jury*) at the said Sittings of Assize and Nisi Prius found that (*stating the finding on the issues,*) [*or* and the Jury (*or Judge*) at the said Sittings of Assize and Nisi Prius assessed the damages of the Plaintiff at                      over and above his costs ;] Therefore, &c. (*as the case requires.*)

---

FORM 4.

(Section 39.)

ENTRY TO BE MADE IN THE RECORD WHERE A COUNTY COURT CASE BROUGHT DOWN FOR TRIAL AT THE ASSIZES HAS BEEN MADE A REMANET.

And the Plaintiff having, pursuant to an order of the Honourable Mr. Justice                      (*or, as the case may be*) made in this case on the day of                      18                      , brought this case down for trial at the Sittings of Assize and Nisi Prius holden at                      in and for the County of                      on the                      day of                      18                      , the same was made a remanet, and at the said Sittings the presiding Judge endorsed (*or caused to be endorsed*) on the record that this cause was a remanet, and might be entered and tried at any County Court or Assizes.

## CHAPTER 50.

## An Act respecting the Procedure of the Superior Courts of Common Law and of the County Courts.

- Short title, s. 1.  
 Interpretation, ss. 2.
- COMMENCEMENT OF ACTIONS:  
 To be by Writ, ss. 3,4.  
 Issue of Writs, ss. 5-11.  
 Subsequent proceedings to be in office from which writ issued, s. 12.  
 Writ of Summons:  
 Form, ss. 13-19.  
 Service, ss. 20-25.  
 Concurrent Writs, s. 26.  
 Renewal, ss. 27,28.  
 Writ of Capias:  
 Form, ss. 29-31.  
 Concurrent Writs, s. 32.  
 Service, ss. 33-35.  
 Application for discharge from custody, s. 36.  
 Declaration when defendant imprisoned, s. 37.  
 Bail, ss. 38-46.  
 Writs of Capias in actions commenced by Writ of Summons, s. 47.  
 Service of absent parties, ss. 48-53.  
 Miscellaneous provisions respecting Writs, ss. 54-56.  
 Service of proceedings subsequent to Writ, ss. 57-59.
- APPEARANCE, ss. 60-63.  
 Proceedings upon non-appearance, ss. 64-69.  
 Security for costs, ss. 70,71.  
 Stay of proceedings where another action, s. 72.  
 Misnomer and misjoinder of parties, ss. 73-83.  
 Joinder of causes of action, ss. 84-86.
- PLEADINGS:  
 Language and form of, in general, ss. 87-92.  
 Declaration, ss. 93-98.  
 Pleas and subsequent Pleadings, ss. 99-147.  
 General provisions, ss. 99-104.  
 Form, ss. 105,106.  
 Pleas *puis darrein continuance*, s. 107.
- Pleas of payment into Court, ss. 108-111.  
 Pleas in actions partaking of the nature both of Contract and Tort, s. 112.  
 Pleas to be taken distributively, s. 113.  
 Rules as to traverses ss. 114,115.  
 Replications, s. 116.  
 Joinder of issue, s. 117.  
 Pleading and Demurring, s. 118.  
 Pleading several Pleas, ss. 119, 120.  
 Payment of money into Court, ss. 121,122.  
 New Assignments, 123,124.  
 Time for pleading to amended Pleading, s. 125.  
 Dilatory Pleas, s. 126.  
 Demurrers, ss. 127-130.  
 Equitable Pleadings, ss. 131-133.  
 Pleadings in actions on Bills and Notes, ss. 134-144.  
 Pleadings in actions on Foreign Judgments, ss. 145-147.
- INTERLOCUTORY PROCEEDINGS.  
 Applications in matters of practice, when may be to County Court Judges, 148.  
 Judgments by default and assessment of damages, ss. 149-153.  
 Changing Venue, ss. 154,155.  
 Examination of parties and discovery, ss. 156-167.  
 Inspection of real property in question, by jury, &c., s. 168.  
 Discovery and inspection of documents, ss. 169,170.  
 Admission of documents, ss. 171-173.  
 Evidence on summary, &c. applications and proceedings, ss. 174-180.  
 Determination of questions by consent of parties, with or without Pleadings, ss. 181-188.  
 Determination of matters of account by reference to Referees or Arbitrators, ss. 189-227.

Proceedings upon death or marriage of parties, s. 228-242.  
 Town and Country causes defined, s. 243.  
 Notice of trial, &c., ss. 244-246.  
 Nisi Prius Records, passing and entering of, ss. 247-250.  
 Form of Venire in, s. 251.

## TRIAL.

Trial of issues by Judge or by Jury, ss. 252-258.  
 Adjournment of trial, s. 259.  
 Exclusion of witnesses at trial, s. 260.  
 Addresses of Counsel, &c., 261.  
 Decision of Judge and verdicts of Juries, ss. 262-265.  
 Interest on verdicts, ss. 266-269.  
 Amendments, ss. 270-273.  
 Costs of the day, ss. 274-276.

Postea, ss. 277-278.

Transmission and delivery of } Nisi  
 Prius Records, ss. 279, 280.

## MOTIONS.

Matters to be heard by a single Judge, s. 281-282.  
 Motions for New Trials, &c., ss. 283-293.  
 Arrest of judgment, ss. 294, 295.  
 Confessions of judgment, ss. 296, 297.

## JUDGMENT AND EXECUTION, ss. 298-303.

Examination of judgment debtors and Garnishee proceedings, ss. 304-321.

Revival of judgments, ss. 322-333.

Costs, ss. 334-353.

Computation of time, s. 354.

Schedules, p. 686.

FOR regulating the process and proceedings in the Superior Preamble.  
 Courts of Law and in the County Courts respectively,  
 Her Majesty, by and with the advice and consent of the  
 Legislative Assembly of the Province of Ontario, enacts as  
 follows :

1. This Act may be cited as "*The Common Law Procedure Act*." Short Title of Act.

## INTERPRETATION.

2. In the construction of this Act unless the context requires a different interpretation,

(1) "Superior Courts" shall mean the Superior Courts of Common Law ; and wherever any power is given by this Act to the Superior Courts or to a Judge thereof, the words "a Judge" shall be held to authorize any Judge of either of the said Superior Courts to exercise such power, although the particular proceedings may not be in a cause pending in the Court whereof he is a Judge. C. S. U. C. c. 22, s. 344.

(2) "Clerk" shall mean the Clerk of the Crown of each of the Superior Courts, or Clerk of the County Court, according as the proceeding with reference to which the term "Clerk" is used applies to the Superior Courts or County Courts. C. S. U. C. c. 22, s. 345.

(3) "Deputy Clerk" shall mean Deputy Clerk of the Crown. C. S. U. C. c. 22, s. 345.



## COMMENCEMENT OF ACTIONS.

1. *Non Bailable Process.*

All actions not bailable to be commenced by writ of summons.

3. Except in cases where it is intended to hold the defendant to special bail, all personal actions, including actions by or against members of the Senate and House of Commons of Canada, and of the Legislative Assembly of Ontario and Attorneys at Law, brought in the said Courts when the defendant is residing or supposed to reside within the jurisdiction thereof, shall be commenced by writ of summons, in the words or to the effect of Form No. 1, in Schedule A to this Act and in every such writ and copy thereof, the place and County of the residence or abode or supposed residence or abode of the party defendant, shall be mentioned. C. S. U. C. c. 22, s. 2.

2. *Bailable Process.*

Commencement of actions where it is intended to hold defendant to special bail.

4. In case any person is to be arrested and held to special bail, the process shall be by a writ of *capias*, in the words or to the effect of Form No. 2 in Schedule A to this Act, which writ shall bear date, be tested and (in addition to other endorsements) be endorsed in the same manner as writs of summons, and may be directed to the Sheriff of any County in Ontario. C. S. U. C. c. 22, s. 3.

## ISSUE OF WRITS.

Process Clerk to issue writs, &c., to parties and their attorneys in Toronto.

5. In the Superior Courts, the Clerk of the Process shall issue to the parties or their attorneys all original and other writs of summons or other writs for the commencement of actions, writs of *capias*, and writs of replevin required to be issued from the principal office at Toronto, and shall renew such writs, (except writs of *capias*,) as hereinafter authorized. C. S. U. C. c. 22, s. 4 (1).

Deputy Clerk and County Court Clerk in the outer Counties.

6. Each Deputy Clerk of the Crown shall issue writs for the commencement of actions in his County in the Superior Courts, and the Clerks of the County Courts shall issue all similar writs in the County Courts respectively. C. S. U. C. c. 22, s. 4 (2).

Writs to issue alternately from each of Superior Courts.

7. In the Superior Courts, such writs shall be issued alternately one from each of such Courts, and not otherwise, but this shall not affect the issue of concurrent writs. C. S. U. C. c. 22, s. 4 (3).

All writs to be under the seal of the Courts, and tested, &c.

8. All writs issued by any of the said Courts shall be under the seal thereof, and in the Superior Courts shall be tested in the name of the Chief Justice, and in the County Courts in the name of the Judge thereof; or in case of the death of such Chief Justice or Judge, then in the name of the Senior Judge, in the Superior Courts, and of the Junior or acting Judge in the County Courts for the time being. C. S. U. C. c. 22, s. 5.

**9.** The Process Clerk and each Deputy Clerk of the Crown Office from and the Clerk of each County Court, shall note in the margin which issued of every writ issued by him, from what office and in what to be noted in County the writ issued, and shall subscribe his name thereto. the margin.  
C. S. U. C. c. 22, s. 6.

**10.** In cases in the Superior Courts in which the cause of Proper office action is transitory, the plaintiff may sue out the writ for the for taking out commencement of the action from the office of the Clerk of writs in transitory actions. either of the said Superior Courts, or from the office of any of the Deputy Clerks of the Crown; and in like cases in a County Court the writ may be sued out from any County Court having jurisdiction over the cause of action. C. S. U. C. c. 22, s. 7.

**11.** Where the cause of action is local, the writ for the com- When venue mencement of the action must be sued out from the office within local. the proper County. C. S. U. C. c. 22, s. 8.

**12.** All proceedings to final judgment in actions, whether Subsequent transitory or local, shall be carried on in the office from which proceedings. the first process issues. C. S. U. C. c. 22, s. 8.

#### WRITS OF SUMMONS.

**13.** It shall not be necessary to mention any form or cause Form of action of action in any writ of summons or in any notice thereof. C. need not be S. U. C. c. 22, s. 9. stated in writ.

**14.** Every such writ shall contain the names of all the de- To contain the fendants in the action, C. S. U. C. c. 22, s. 10. names of all the parties.

**15.** Every such writ shall bear date on the day on which the To be dated same issues. C. S. U. C. c. 22, s. 11. the day of issue.

**16.** Every such writ shall be endorsed with the name and And endorsed place of abode of the attorney actually suing out the same; and with the name where he sues out the same as agent for another attorney, the and abode of the plaintiff's name and place of abode of such other attorney shall also be attorney and endorsed thereon. C. S. U. C. c. 22, s. 12. agent.

**17.** Where the writ is sued out by the plaintiff in person, When sued out in person, he shall endorse thereon a memorandum expressing that the to be so noted, same has been sued out by him in person, and mentioning the &c. City, Town, incorporated or other Village or Township within which he resides. C. S. U. C. c. 22, s. 13.

**18.** The plaintiff's attorney, or the plaintiff, if he sues in The amount of person, shall endorse on every such writ issued for the pay- plaintiff's ment of a debt, and upon every copy thereof, the amount of the claim to be plaintiff's claim for debt, and if there be an attorney, the endorsed on writ—If paid attorney's claim for the costs of writ, copy and service, and within 8 days, proceedings to stop.

attendance to receive debt and costs, and that, upon payment thereof within eight days, to the plaintiff or his attorney, as the case may be, further proceedings will be stayed, which endorsement shall be written or printed in the following form, or to the like effect:

Form.           “ The Plaintiff’s claims \$           for debt, and \$           for costs; and if  
“ the amount thereof be paid to the Plaintiff or his Attorney within eight  
“ days from the service hereof, further proceedings will be stayed;”

But the defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth is disallowed, the plaintiff’s attorney shall pay the costs of taxation. C. S. U. C. c. 22, s. 14.

In demands  
for liquidated  
sums, certain  
particulars  
may be endorsed  
on the writ.

**19.** In all cases where the defendant resides within the jurisdiction of the Court, and the claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract express or implied, as for instance, on a bill of exchange, promissory note or cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guarantee whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, note or cheque, the plaintiff may make upon the writ of summons and copy thereof a special endorsement of the particulars of his claim, in the words or to the effect of Form No. 5 in Schedule A to this Act, and when the writ has been so endorsed, the endorsement shall be considered as particulars of demand, and no further or other particulars need be delivered unless ordered by the Court or a Judge. C. S. U. C. c. 22, s. 15.

No further  
particulars  
need be given  
unless ordered.

Writs issued  
from any of  
the Courts  
may be served  
in any County.

**20.** The writ of summons, whether issued by one of the Superior Courts or by any County Court, may be served in any County in Ontario, and the service thereof, whenever practicable, shall be personal; but the plaintiff may on affidavit from time to time apply to the Court out of which the writ issued, or to a Judge having jurisdiction over the case, and if it appears to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of the defendant, or that he wilfully evades service of the same, and has not appeared thereto, such Court or Judge may by order grant leave to the plaintiff to proceed as if personal service had been effected, subject to such conditions as to the Court or Judge seem fit. C. S. U. C. c. 22, s. 16.

If service  
evaded, how  
plaintiff to  
proceed.

Service on  
Corporations,  
how effected.

**21.** Every such writ issued against a corporation aggregate, and, in the absence of its appearance by attorney, all papers and proceedings in the action before final judgment may be served on the Mayor, Warden, Reeve, President, or other head officer, or on the Township, Town, City or County Clerk, or on

the Cashier, Manager, Treasurer or Secretary, Clerk or Agent of such corporation or of any branch or agency thereof in Ontario; and every person who, within Ontario, transacts or carries on any of the business of or any business for any corporation whose chief place of business is without the limits of Ontario, shall, for the purpose of being served with a writ of summons issued against such corporation, be deemed the agent thereof. C. S. U. C. c. 22, s. 17.

**22.** Every writ of summons issued against a railway, telegraph, or express corporation, and all subsequent papers and proceedings in the event of an appearance not having been duly entered, may be served on the agent of such corporation, at any branch or agency thereof, or on any Station Master of any railway company, or on any Telegraph Operator, or Express Agent having charge of any telegraph or express office belonging to such corporation; and any such Master, Operator or Express Agent shall for the purpose of being served with a writ of summons issued against such corporation or any paper or proceeding as aforesaid, in the event of non-appearance, be deemed the agent thereof. 34 V. c. 12, s. 11.

Service of papers on certain corporations.

(*For mode of service upon Companies incorporated by special Act and by Letters Patent, see Rev. Stat. c. 149 s. 43 and c. 150 s. 60.*)

**23.** Upon the delivery of a writ of summons (or a writ in ejectment, at the office of any Sheriff, to be served by him, he, his Deputy or Clerk, shall endorse thereon the time when it was so delivered; and in case the writ is not fully and completely served within ten days after such delivery, the plaintiff, his attorney or agent, shall be entitled to receive back the same; and the Sheriff, Deputy Sheriff or Clerk shall endorse thereon the time of the delivery; and the costs of the mileage and service of the writ by any literate person afterwards shall, in case the person to be served was at any time during such ten days within the County, be allowed in the taxation of costs, as if the service had been by the Sheriff or his officer. 37 V. c. 7, s. 83.

Endorsement of receipt of process, &c.; non-service, re-delivery to plaintiff, costs of service.

**24.** If the Sheriff, being applied to, neglects or refuses to return the writ, after the expiration of the ten days, the plaintiff may issue a duplicate or concurrent writ on the *præcipe* already filed, and the costs of the first or other writ not returned may be charged against and recovered from the Sheriff, by the plaintiff or his attorney. 37 V. c. 7, s. 84.

Failure by Sheriff to re-deliver.

**25.** The person serving such writ shall, within three days next after such service, endorse thereon the day of the week and of the month of the service thereof, otherwise the plaintiff shall not be at liberty in case of non-appearance to proceed under this Act: and every affidavit of service of such writ shall

Time of service of writs to be endorsed within three days after service.



mention the day on which such endorsement was made. C. S. U. C. c. 22, s. 19.

Concurrent writs may be sued out.

**26.** The plaintiff in any action may, at any time during six months from the issuing of the original writ of summons, sue out from the office whence the same issued, a concurrent writ or concurrent writs of the same kind to be tested of the same day as the original writ, and to be marked by the Clerk or Deputy Clerk of the Crown or Clerk of the County Court issuing the same with the word "*Concurrent*" in the margin, with the memorandum required by the ninth section of this Act; but such concurrent writ or writs shall only be in force for the period during which the original writ continues in force. C. S. U. C. c. 22, s. 20.

Within what time writs must be served, &c.

Renewing writs.

Effect of renewal as to Statute of Limitations.

**27.** No original writ of summons shall be in force for more than six months from the day of the date thereof inclusive; but if any defendant therein named has not been served therewith, the original or any concurrent writ may at any time before its expiration be renewed for six months from the date of such renewal, and so from time to time, during the currency of the renewed writ, by being marked in the margin with a memorandum to the effect following: "*Renewed for six months from the day of*," signed by the Clerk or Deputy Clerk of the Crown or Clerk of the County Court who issued the writ, or his successor in office, upon delivery to him by the plaintiff or his attorney of a *præcipe*, in the form formerly required to be delivered upon the obtaining of an *alias* writ; and the writ so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action is limited, and for all other purposes, from the date of the issuing of the original writ. C. S. U. C. c. 22, s. 21.

Memorandum of renewal to be sufficient evidence thereof.

**28.** The production of the writ of summons with the memorandum signed, showing such writ to have been renewed, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ. C. S. U. C. c. 22, s. 22.

#### WRITS OF CAPIAS.

Writs of *capias* to be in force two months and not renewable.

Rev. Stat. c. 67.

**29.** Every writ of *capias* shall bear date on the day on which the same issues, and shall be in force for two months from the day of the date thereof inclusive, and no longer; and no such writ shall be renewed, but on the expiration thereof a new order may be obtained in the manner directed by *The Act respecting Arrest and Imprisonment for Debt*. C. S. U. C. c. 22, ss. 23 & 24.

Endorsation on.

**30.** Every such writ shall be endorsed with the name and place of abode of the attorney actually suing out the same, and

where he sues out the same as agent for another attorney, the name and place of abode of such other attorney shall also be endorsed thereon. C. S. U. C. c. 22, s. 25.

**31.** Where the writ is sued out by the plaintiff in person, he shall endorse thereon a memorandum expressing that the same has been sued out by him in person, and mentioning the City, Town, incorporated or other Village or Township within which he resides. C. S. U. C. c. 22, s. 26.

If sued out in person.

**32.** Concurrent writs of *capias* may be issued from time to time in like manner and form as the original writ in the action, and shall only be in force for the same period as such original writ and no longer. C. S. U. C. c. 22, s. 27.

Concurrent writs of *capias* may issue.

**33.** Every writ of *capias*, and so many copies thereof as there are persons intended to be arrested thereon or served therewith, together with every memorandum or notice subscribed thereto and all endorsements thereon, shall be delivered with the original writ to the Sheriff or other officer to whom such writ is directed, and who has the execution and return thereof, and the plaintiff or his attorney may order such Sheriff or officer to arrest one or more of the defendants therein named, and to serve a copy thereof on one or more of the others, which order shall be duly obeyed by such Sheriff or officer. C. S. U. C. c. 22, s. 28.

Copies, &c., to be served.

**34.** Such Sheriff or officer shall, within two months from the day of the date of the writ of *capias*, but not afterwards, execute the same according to the exigency thereof, and shall upon or immediately after the execution of such process cause one copy thereof, and of the memorandums and endorsements thereon, to be delivered to every person upon whom he executes the same, whether by service or arrest. C. S. U. C. c. 22, s. 29.

Sheriff to execute within two months from date.

**35.** Such service shall be of the same force and effect as the service of the writ of summons hereinbefore mentioned; and subsequent proceedings, whether after an arrest and service or service only, shall, in all the Courts, be according to the practice in force in the Superior Courts in like cases. C. S. U. C. c. 22, s. 30.

Service equivalent to service of writs of summons.

**36.** Any person arrested upon any writ of *capias* issued out of either of the Superior Courts, may apply at any time after his arrest to the Court in which the action has been commenced, or to a Judge of one of such Courts, for an order or rule on the plaintiff, to show cause why the person arrested should not be discharged out of custody; and such Court or Judge may make absolute or discharge any such order or rule, and direct the costs of the application to be paid by either

Defendant may apply to a Judge to be discharged from custody.

Power of Judge.

Court may discharge or vary Judge's order.

party, or make such other order therein as to such Court or Judge seems fit; but any such order made by a Judge may be discharged or varied by the Court on application by either party dissatisfied with such order; and the Judge or acting Judge of a County Court making any order to hold to bail, whether in one of the Superior Courts or in his own Court, shall in respect to such order, the writ of *capias* thereon issued, and the arrest made thereupon, possess all the powers given to a Judge of either of the said Superior Courts under this section, and may in like manner, on application to him, order the defendant to be discharged out of custody, direct the costs of the application to be paid by either party, or make such order therein as to such County Court Judge seems fit. C. S. U. C. c. 22 s. 31.

Declaration when to be made, when defendant is imprisoned for want of bail.

**37.** If any defendant is taken or charged in custody upon any such process, and imprisoned for want of sureties for his appearance thereto, the plaintiff may, before the end of the next Term after the arrest of the defendant, declare against him and proceed thereon in the manner and according to the directions contained in the one hundredth and one hundred and thirty-second Rules of the Superior Courts, made in Trinity Term, in the twentieth year of Her Majesty's reign. C. S. U. C. c. 22, s. 32.

#### BAIL.

On writs from County Courts, the Sheriff to take bail from persons arrested and assign bail bond, &c.

**38.** The Sheriff to whom a writ of *capias* issued out of a County Court is directed, shall take bail from any defendant arrested thereon, and if required shall assign the bail bond in like manner as the law directs in cases where like process is issued from one of the Superior Courts, and such assignment shall have the same effect as if the writ had issued from one of the said Superior Courts. C. S. U. C. c. 22, s. 33.

Special bail may be entered according to the form of practice, after which plaintiff may proceed as upon a writ of summons.

**39.** Special bail may be put in and perfected according to the established practice; and after special bail has been so put in, the plaintiff may, by filing a declaration or otherwise, proceed to judgment, in like manner as if the action had been commenced by writ of summons and the defendant had appeared thereto. C. S. U. C. c. 22, s. 34.

Condition of recognizance of bail.

**40.** The condition of the recognizance of special bail shall be, that, if the defendant be condemned in the action at the suit of the plaintiff, he will satisfy the costs and condemnation money, or render himself to the custody of the Sheriff of the County in which the action against such defendant has been brought, or that the cognizors will do so for him, C. S. U. C. c. 22, s. 35.

How bail may justify.

**41.** Upon due notice given to the plaintiff or his attorney, and upon production of the bail-piece, and whether the defendant is detained in custody or not, bail may justify (either

in Term time or in Vacation) before any Judge of the Court in which the action is pending, and such justification and the opposing thereof may be by affidavit or affirmation without the attendance of the bail in open Court or before such Judge, unless specially required by such Court or Judge, and such Court or Judge may thereupon order a rule to issue for the allowance of such bail and for the discharge of the defendant (if in custody) by a writ of *supersedeas*. C. S. U. C. c. 22, s. 36.

And order for allowance to issue.

**42.** Special bail, on production of a copy of the bail-piece certified by the Clerk of the Court having the custody thereof, may surrender their principal to the Sheriff of the County in which such principal is resident or found, and such Sheriff shall receive such principal into his custody and give such bail a certificate under his hand and seal of office of such surrender, for which certificate the Sheriff shall be entitled to the sum of one dollar, and any Judge of the Court in which the action is pending, upon proof of due notice to the plaintiff or his attorney of such surrender, and upon production of the Sheriff's certificate thereof, shall order an *exoneretur* to be entered on the bail-piece, and thereupon the bail shall be discharged. C. S. U. C. c. 22, s. 37.

Bail may surrender their principal to the Sheriff of any County, &c.

**43.** In cases where such surrender is made to any other Sheriff than the Sheriff of the County specified in the condition of the recognizance of bail, the plaintiff shall not be compelled to change the *venue* or to conduct his suit in any manner different from that in which he would have been required to conduct it had the surrender been made to such last-mentioned Sheriff. C. S. U. C. c. 22, s. 38.

Such surrender not to affect the *venue*.

**44.** In case a person is surrendered by his bail to the Sheriff of any County other than that in which he resided or carried on business at the time, such person shall be entitled to be transferred to the gaol of his own County on prepaying the expense of his removal; and the Sheriff in whose County he was arrested may, if he is satisfied of the facts, transfer him accordingly; but if the Sheriff declines to act without an order of the Court or a Judge, such an order shall be made on the application of the prisoner and notice to the opposite party. C. S. U. C. c. 22, s. 39.

Person arrested out of his County may be transferred to it, paying the costs.

**45.** In case (in any action in a County Court) the defendant has been surrendered by his bail into the custody of the Sheriff of a County other than that in which the action has been instituted, the plaintiff may charge the defendant in execution, and take all other necessary proceedings in like manner as if the suit had been instituted in one of the Superior Courts. C. S. U. C. c. 22, s. 40.

In cases in a County Court, how plaintiff to proceed when defendant surrendered in a County different from that in which the action was brought.

**46.** A recognizance of bail taken in a County Court may be entered of record in such Court, and an action of debt or

Recognizance of bail in



County Courts may be recorded and proceeded upon in like manner as in the Superior Courts.

*scire facias* shall lie thereupon in such Court, as in similar cases in the Superior Courts, and in cases in the County Courts the Judges thereof may grant the same remedies to the plaintiff against the Sheriff or Sheriff's bail or the bail to the action, and afford relief to the defendant, Sheriff or bail in like manner and form as might be done by either of the Superior Courts, had the action been instituted in such Court. C. S. U. C. c. 22, s. 41.

Plaintiff may obtain *capias* in certain cases after commencing the suit by writ of summons.

17. The plaintiff, after the commencement of any action by writ of summons, but before judgment in such action, upon obtaining a Judge's order for that purpose, in the manner provided for in the fifth section of *The Act respecting Arrest and Imprisonment for Debt*, may sue out of the office whence such writ of summons issued a writ of *capias*, and one or more concurrent writs.

Writ to issue from the same Court as the original writ.

2 Such writ of *capias* shall, in every such case, notwithstanding anything in the seventh section of this Act, be issued out of the Court out of which the original writ in the cause was issued, and shall be in the words or to the effect of Form No. 6 in Schedule A to this Act and may be directed to the Sheriff of any County in Ontario; and so many copies of such writ, with every memorandum or notice subscribed thereto, and all endorsements thereon as there may be persons intended to be arrested thereon, shall be delivered with such writ to the Sheriff or other officer who has the execution or return thereof, and such Sheriff or officer shall, immediately upon or after the execution thereof, cause one such copy to be delivered to every person upon whom such process is executed by him, and shall, within three days at farthest after such execution, endorse upon such writ the true day of the execution thereof.

Form of writ.

To whom directed.

Copies.

One copy to be delivered to each person on whom the writ is executed.

Proceedings.

3 The proceedings in any such action may be carried on to judgment without regard to the issuing of such writ of *capias* or to any proceedings in any way arising from or dependent thereon; and on entering judgment, the plaintiff shall be entitled to tax the costs of such writ or writs of *capias* and the proceedings thereon, in like manner as if the suit had been originally commenced by writ of *capias*, together with the other costs incurred and taxable in the cause. C. S. U. C. c. 22, s. 42.

Costs.

#### ABSENTEES.

Summons to party being a British subject residing out of the jurisdiction of the said Courts.

48. In case any defendant being a British subject, is residing out of Ontario, the plaintiff may issue a writ of summons in the words or to the effect of Form No. 3 in Schedule A to this Act which writ shall bear the endorsement contained in the said Form, purporting that such writ is for service out of Ontario, and the time for appearance by the defendant shall be regulated by the distance from Ontario of the place where the defendant is residing, having due regard to the

Service thereof, &c.

means of, and necessary time for postal or other communication. C. S. U. C. c. 22, s. 43.

**49.** Upon the Court or Judge being satisfied that there is a cause of action which arose in Ontario, or in respect of the breach of a contract made therein, and that the writ has been personally served upon the defendant, or that reasonable efforts have been made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of Ontario in order to defeat or delay his creditors, such Court or Judge may from time to time direct that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge (having regard to the time allowed to the defendant to appear being reasonable, and to the other circumstances of the case) seem fit; but the plaintiff, before obtaining judgment, shall prove the amount of the debt or damages claimed by him in such action, either before a Judge or jury, on an assessment in the usual mode, or by reference in the manner hereinafter provided, according to the nature of the case, as such Court or Judge may direct. C. S. U. C. c. 22, s. 44.

If service made or cannot be made after due diligence.

Order in such case by the Court or a Judge on affidavit.

Plaintiff must prove his case.

**50.** In any action against a person residing out of Ontario and not being a British subject, the like proceedings may be taken as against a British subject resident out of Ontario, except that the plaintiff shall, instead of the writ of summons mentioned in the forty-eighth section, issue a writ of summons in the words or to the effect of Form No. 4. in Schedule A to this Act, and shall in manner aforesaid serve a notice of such last-mentioned writ upon the defendant, which notice shall be in the form also contained in the said Form No. 4; and such service, or reasonable efforts to effect the same, shall be of the same force and effect as the service or reasonable efforts to effect the service of a writ of summons in any action against a British subject resident abroad, and by leave of the Court or a Judge, upon its or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon. C. S. U. C. c. 22, s. 45.

If the defendant is not a British subject.

**51.** Where in a suit upon a contract or judgment against a defendant residing out of Ontario, it appears to the satisfaction of the Court or a Judge that the plaintiff has a good cause of action against the defendant, and that the defendant has assets in Ontario of the value of two hundred dollars at least, which may be rendered liable to the judgment in case the plaintiff should recover in the action, and that the writ has been personally served upon the defendant; or, in case the defendant is not a British subject, that the notice authorized by section fifty of this Act has been so served; or, in case of a foreign corporation aggregate, that such notice has been personally served upon the head officer of the corporation at its

Procedure in case of service on absent defendant, and neglect to appear.

chief place of business, and that the defendant wilfully neglects to appear, the Court or Judge may, although the contract was made without Ontario, if the breach thereof occurred within Ontario, or in case the suit is upon a judgment, notwithstanding the cause of action wholly arose out of Ontario, direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions, as to the Court or Judge may seem fit; but the plaintiff before obtaining judgment shall prove the amount of debt or damages claimed by him in the action, either before a Judge or jury upon an assessment in the usual mode, or by reference in manner provided by this Act, according to the nature of the case, as the Court or Judge may direct. 37 V. c. 7, s. 45.

Certain writs may be made concurrent.

**52.** A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction, and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction. C. S. U. C. c. 22, s. 46.

Affidavits for enabling proceedings to be taken against a party out of the jurisdiction, before whom to be made.

**53.** Any affidavit for the purpose of enabling the Court or a Judge to direct proceedings to be taken against a defendant residing out of Ontario, may be sworn before the persons mentioned in section thirty-eight of chapter sixty-two and sections seven and eight of chapter sixty-three of *The Revised Statutes*, or before the Chief Justice or Judge of any Court of Superior Jurisdiction in the country wherein the defendant resides or is served, or before the Mayor or Chief Magistrate of any City, Town or place wherein the defendant resides or is served, or before any Consul-General, Consul, Vice-Consul or Consular Agent for the time being, appointed by Her Majesty at any foreign port or place at or near which the defendant resides or is served; and saving all just exceptions, every affidavit so sworn may be used and shall be admitted in evidence, provided it purports to have been sworn before such persons as aforesaid. C. S. U. C. c. 22, s. 47; 34 V. c. 14, ss. 2 & 4; C. S. C. c. 79, s. 1.

#### MISCELLANEOUS PROVISIONS RESPECTING WRITS, &c.

Amendment if the plaintiff omits anything in the endorsement on or in the writ.

**54.** If the plaintiff or his attorney omits to insert in or to endorse on any writ or copy thereof, any of the matters required by this Act to be inserted therein or endorsed thereon, such writ or copy shall not on that account be held void, but it may be set aside as irregular, or be amended upon application made to the Court out of which the same issued, or to a Judge, and such amendment may be made upon any application to set aside the writ, upon such terms as to the Court or Judge seem fit. C. S. U. C. c. 22, s. 48.

Amendment if one form of writ be substituted by

**55.** If any one of the forms of writs of summons in the Forms Nos. 1, 3 and 4, given in Schedule A to this Act has by mistake or inadvertence been substituted for any of the others,

such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action, but upon an *ex parte* application to a Judge, whether before or after an application to set aside the writ or any proceeding thereon, and whether the same or notice thereof has been served or not, the writ may be amended by such Judge without costs. C. S. U. C. c. 22, s. 49.

**56.** Every attorney whose name is endorsed on any writ issued for the commencement of any action shall, on demand in writing made by or on behalf of any defendant, declare forthwith whether such writ has been issued by him or with his authority or privity; and if he answers in the affirmative, then he shall also, in case the Court or a Judge so directs, declare in writing, within a time to be limited by such Court or Judge, the profession or occupation and place of abode of the plaintiff, on pain of being guilty of a contempt of the Court from which such writ appears to have issued; and if such attorney declares that such writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereon without leave of the Court or a Judge. C. S. U. C. c. 22, s. 50.

Attorney whose name is endorsed on the writ, to declare whether he sued it out, and if so, plaintiff's name, &c., if so ordered.

Proceedings stayed if he declares he did not sue it out.

#### SERVICE OF PAPERS.

**57.** The service of all papers and proceedings subsequent to the service of the writ, shall be made upon the defendant or his attorney, according to the established practice, unless special provision is otherwise made in this Act; and if the attorney of either party does not reside or has not a duly authorized agent residing in the County wherein the action has been commenced, then service may be made upon the attorney wherever he resides, or upon his duly authorized agent in Toronto, or if such attorney has no duly authorized agent there, then service may be made by leaving a copy of the papers for him in the office where the action was commenced, marked on the outside as copies left for such attorney. C. S. U. C. c. 22, s. 61.

Service of papers, how made.

**58.** In all cases where pleadings or notices of trial or countermand of notice of trial in either of the Superior Courts or in a County Court, are served upon the agent of the attorney in the cause in Toronto, two clear days shall be added to the time allowed by law for service at the office of the attorney. 34 V. c. 12, s. 12.

Time for pleading and for notice of trial extended in certain cases.

**59.** Unless otherwise provided by Statute or Rule of Court, declarations and other pleadings and notices required to be served in any action, whether in the Superior or County Courts, may be served in any County. C. S. U. C. c. 22, ss. 84 & 91.

Declarations and other pleadings may be served in any County.

#### APPEARANCE.

**60.** The defendant may appear at any time before judgment and if he appears after the time specified either in the

Defendant may appear at



any time before judgment.

His position.

writ of summons or in the warning endorsed on any writ of *capias* served on him, or in any rule or order to proceed as if personal service had been effected, he shall, after notice of such appearance to the plaintiff or his attorney, be in the same position as to pleadings or other proceedings in the action as if he had appeared in time; but a defendant appearing after the time appointed by the writ shall not be entitled to any further time for pleading or for any other proceeding than if he had appeared within such appointed time; and if the defendant appears after the time appointed by the writ, and omits to give such notice of his appearance, the plaintiff may proceed as in case of non-appearance. C. S. U. C. c. 22, s. 51.

Defendant appearing in person to give an address,

where pleadings, &c., may be served.

**61.** Every appearance by the defendant in person shall give an address at which all pleadings and other proceedings not requiring personal service may be left for him, and if such address is not given, the appearance shall not be received, and if an illusory or fictitious address is given, the appearance shall be irregular and may be set aside by the Court or a Judge, and the plaintiff may, by the Court or Judge, be permitted to proceed by posting up the proceedings in the office from whence the writ was sued out. C. S. U. C. c. 22, s. 52.

Mode and form of appearance.

**62.** The mode of appearance to every such writ of summons under the authority of this Act, shall be by filing with the proper officer in that behalf, a memorandum in writing according to the following form, or to the like effect:—

A. B., Plaintiff, against C. D., Defendant,	}	The Defendant, C. D., appears in person,
or		
against C. D., and another,		or
or	}	E. F., Attorney for C. D., appears for him.
against C. D. and others.		

*(If the Defendant appears in person, here give his address).*

Entered the                      day of                      , A.D. one thousand eight hundred and                      .

C. S. U. C. c. 22, s. 53.

Plaintiff need not enter appearance for defendant.

**63.** In no case shall it be necessary for the plaintiff to enter an appearance for the defendant. C. S. U. C. c. 22, s. 54.

Proceedings on non-appearance of defendant on writ specially endorsed.

**64.** In case of non-appearance by the defendant where the writ of summons has been endorsed in the special form hereinbefore provided, and in case the plaintiff files the writ of summons, and an affidavit of personal service thereof, or, in case of service on a corporation, files an affidavit of service in the manner by law authorized for service on corporations, or files a rule of Court, or a Judge's order for leave to proceed under the provisions of this Act, such plaintiff may at once sign final judgment in the words to the effect of Form No. 7, in Schedule A to this Act for any sum not exceeding the sum endorsed on the writ, together with interest to the date of

Signing judgment.

the judgment, and costs to be taxed in the ordinary way, and no proceedings in error or appeal shall lie on any such judgment; and the plaintiff may at the expiration of eight days from the last day for appearance and not before, issue execution upon such judgment; but the Court or a Judge may, after final judgment, let in the defendant to defend, upon an application supported by satisfactory affidavits accounting for the non-appearance, and disclosing a defence upon the merits. C. S. U. C. c. 22, s. 55.

Execution.

Defendant  
may be let in  
to defend.

**65.** In case of such non-appearance where the writ of summons has not been endorsed in the special form hereinbefore provided, and in case the plaintiff files the writ of summons, and an affidavit of personal service thereof, or in case of service on a corporation, files an affidavit of service in the manner by-law authorized for service on corporations, or files the writ of summons and a Judge's order for leave to proceed under the provisions of this Act, the plaintiff may file a declaration endorsed with a notice to plead in eight days, and in default of a plea may sign judgment by default at the expiration of the time to plead so endorsed. C. S. U. C. c. 22, s. 56.

And if the  
writ be not so  
specially en-  
dorsed.

Declaration.

Signing judg-  
ment.

**66.** In case the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special endorsement on the writ of summons, and in the event of no plea being filed and served, the judgment shall be final, and execution may issue for an amount not exceeding the amount endorsed on the writ of summons with interest and costs; but in such case the plaintiff shall not be entitled to more costs than if he had made such special endorsement and signed judgment upon non-appearance. C. S. U. C. c. 22, s. 57.

Execution.

Costs.

**67.** All the proceedings which are mentioned in any writ of summons or *capias*, or notice or warning thereto or thereon, issued, made or given by authority of this Act, may (in default of a defendant's appearance or putting in special bail) be had and taken at the expiration of ten days from the service or execution thereof, whatever day the last of such ten days may be, and whether in Term or Vacation; but if the last of the ten days be Sunday, Christmas Day or Good Friday, then the following day, or the following Monday, when Christmas Day falls on a Saturday, shall be considered as the last of such ten days. C. S. U. C. c. 22, s. 58.

At what time  
certain pro-  
ceedings may  
be taken if  
defendant does  
not appear.

Holidays.

**68.** If such writ is served or executed on any day between the first day of July and the twenty-first day of August, special bail may be put in by the defendant on bailable process, or appearance may be entered by the defendant on process not bailable, at the expiration of such ten days. C. S. U. C. c. 22, s. 59.

Long vaca-  
tion.

**69.** In any action brought against two or more defendants when the writ of summons has been endorsed in the special form

Proceedings if  
some of the  
defendants

appear and others do not, the writ being specially endorsed.

hereinbefore provided, if one or more of such defendants only appear and another or others of them do not appear, the plaintiff may sign judgment against such defendant or defendants only as have not appeared, and before declaration against the other defendant or defendants, may issue execution upon such judgment, in which case he shall be taken to have abandoned his action against the defendant or defendants who have appeared; or the plaintiff may, before such execution, declare against such defendant or defendants as have appeared, stating by way of suggestion the judgment obtained against the other defendant or defendants who have not appeared, in which case the judgment so obtained against the defendant or defendants who have not appeared shall operate and take effect in like manner as a judgment by default obtained before the commencement of this Act against one or more of several defendants in an action of debt. C. S. U. C. c. 22, s. 60.

#### SECURITY FOR COSTS.

Additional cases in which the defendant may obtain security for costs

**70.** In addition to any cases in which a defendant in any action, may by any law or by the practice of the Courts, be entitled to obtain security for costs from a plaintiff, security for costs may be granted to the defendant or applicant in any action or proceeding in which it is made to appear satisfactorily to the Court or a Judge in Chambers, that the plaintiff has brought a former action or proceeding for the same cause, which is pending either in Ontario or in any other country, or that he has judgment or rule or order passed against him in such action or proceeding, with costs, and that such costs have not been paid; and such Court or Judge may thereupon make such rule or order staying proceedings until such security is given as to the Court or Judge seems meet. 29-30 V. c. 42, s. 1.

Persons suing for penalties may be ordered to give security for costs; in what cases and on what application

**71.** In any action or suit in which the plaintiff sues as an informer, or seeks to recover any penalty given to any informer or person who sues for the same as aforesaid, under any statute or law in which any penalty is given to any person who sues for the same, either for his sole benefit, for the benefit of the Crown, or partly for his benefit and partly for the benefit of the Crown,—the person so sued, or his agent, or attorney, may apply to the Court in which such action or suit was instituted or is pending, for security for costs, upon an affidavit made by the defendant applying, showing to the Court that such action or suit is brought to recover a penalty, and that in the belief of the deponent, the plaintiff or informer is not possessed of property sufficient to answer the costs of the suit in case a verdict is given or judgment rendered in favour of the defendant, and that he (the said defendant) has a good defence to such action or suit upon the merits, as he is advised and believes; and the Judge or Judges of the said Court, in his or their discretion, may make an order that the plaintiff or informer, in any such suit or action, shall give security for the

costs to be incurred in such suit or action, in the same manner and in accordance with the practice in cases where a plaintiff resides out of the Province, and such order shall be a stay of the proceedings in the case, until the proper security is given as aforesaid. 27-8 V. c. 36, s. 1.

#### STAY OF PROCEEDINGS WHERE ANOTHER ACTION PENDING.

**72.** If any action is brought in any Court of Law for any cause of action for which any suit or action has been brought and is pending between the same parties and their representatives in any place or country out of Ontario, such Court or any Judge thereof may make a rule or order to stay all proceedings in such first mentioned Court, until satisfactory proof is offered to such Court or Judge that the suit or action so brought in such other place or country out of Ontario is determined or discontinued. 29-30 V. c. 42, s. 4.

Stay of proceedings if suit is pending for same cause out of Ontario.

#### MISNOMER AND MISJOINDER OF PARTIES.

**73.** No plea in abatement for misnomer shall be allowed in any personal action, but in cases of misnomer the defendant may, upon a Judge's summons founded on an affidavit of the right name, cause the declaration to be amended at the costs of the plaintiff, by inserting the right name; and in case such summons is discharged, the Judge may order the party applying therefor to pay the costs of the application. C. S. U. C. c. 22, s. 62.

Misnomer not to be pleaded in abatement, but to be amended at costs of plaintiff upon Judge's summons.

**74.** The Court or a Judge may, at any time before the trial of a cause, order that any persons not joined as plaintiffs in such cause, shall be so joined, or that any persons originally joined as plaintiffs shall be struck out from such cause, if it appears to such Court or Judge that injustice will not be done by such amendment, and that the persons to be added as aforesaid, consent either in person or by writing under their hands to be so joined, or that the persons to be struck out as aforesaid were originally introduced without their consent, or that such persons consent in manner aforesaid to be struck out; and the amendment shall be made upon such terms as to the amendment of the pleadings if any, postponement of the trial, and otherwise as the Court or Judge making the amendment thinks proper. C. S. U. C. c. 22, s. 63.

Court may, in certain cases, order any party not joined as a plaintiff, to be so joined, or any party originally joined to be struck out, before trial.

**75.** Where any such amendment is made, the liability of any persons added as co-plaintiffs shall, subject to any terms imposed as aforesaid, be the same as if such persons had been originally joined in the cause. C. S. U. C. c. 22, s. 64.

Plaintiffs added subject to the same liability as original plaintiffs.

**76.** In case it appears in any action at the trial or assessment of damages therein, that there has been a misjoinder of plaintiffs, or that persons not joined as plaintiffs ought to

Proceedings for amendment if the misjoinder of



plaintiffs or an omission to join those who ought to be joined appear at the trial, the defendant not having given notice of objection.

have been so joined, and the defendant has not, at or before the time of pleading, given notice in writing that he objects to such non-joinder, specifying therein the names of such persons, and if it appears to the Court or Judge or other officer presiding at the trial, that such mis-joinder or non-joinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the persons to be added as aforesaid, consent either in person or by writing under their hands to be so joined, or that the persons to be struck out as aforesaid were originally introduced without their consent, or that such persons consent in manner aforesaid to be so struck out, such mis-joinder or non-joinder may be amended at the trial or assessment by such Court or Judge, or other officer presiding at the trial or assessment, in like manner as to the mode of amendment and proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as is provided in the sections of this Act numbered two hundred and seventy to two hundred and seventy-three inclusive. C. S. U. C. c. 22, s. 65.

Liability of persons ordered to be joined as plaintiffs.

**77.** Every such amendment shall be made upon such terms as the Court or Judge, or other presiding officer by whom the amendment is made, thinks proper; and when any such amendment has been made, the liability of any person who has been added as co-plaintiff shall, subject to any terms imposed as aforesaid, be the same as if such person had been originally joined in the action. C. S. U. C. c. 22, s. 66.

If such notice has been given by the defendant, or non-joinder be pleaded in abatement.

**78.** In case such notice has been given, or where a plea in abatement may be pleaded, in case a plea in abatement of non-joinder of persons as co-plaintiffs has been pleaded by the defendant, the plaintiff, before plea or replication, upon payment of the costs only of and occasioned by amending, may, without any order, amend the writ and other proceedings by adding the name of the person named in such notice or plea in abatement, and proceed in the action without any further appearance, and in case of such amendment after plea, the defendant may plead *de novo*. C. S. U. C. c. 22, s. 67.

Mis-joinder of defendants discovered before trial in action on contract;

**79.** In the case of the joinder of too many defendants in any action on contract, the Court or a Judge, if it appears that injustice will not be done thereby, may, at any time before trial or assessment of damages, order the name or names of one or more of such defendants to be struck out, and the amendment shall be made upon such terms as the Court or Judge thinks proper; and in case it appears at the trial of any action on contract that there has been a mis-joinder of defendants, such mis-joinder may be amended as a variance at the trial in like manner as the mis-joinder of plaintiffs has been hereinbefore directed to be amended, and upon such terms as the Court or Judge, or other presiding officer by whom such amendment is made, thinks proper. C. S. U. C. c. 22, s. 68.

And at trial.

**80.** In any action on contract where the non-joinder of any person as co-defendant has been pleaded in abatement, the plaintiff may, without any order, amend the writ of summons and the declaration by adding the name of the person mentioned in such plea in abatement as a joint contractor, and serve the amended writ upon the person so named in such plea in abatement, and proceed against the original defendants and the person so named in such plea in abatement; but the date of such amendment shall, as between the person so named in such plea of abatement and the plaintiff, be considered for all purposes as the commencement of the action. C S U. C. c. 22, s. 69.

If the non-joinder of defendants be pleaded in abatement in such action.

**81.** In any action brought against any joint obligor or contractor, the action shall not abate nor the plaintiff be required to amend on account of any other joint obligor or contractor not having been made a defendant, unless the party pleading such non-joinder avers in his plea that such joint obligor or contractor is living within the limits of Ontario, and states the place of his residence, nor unless an affidavit of the truth of such plea is filed therewith. C. S. U. C. c. 22, s. 70.

Non-joinder of obligors no ground to abate suit.

**82.** In all cases after a plea in abatement and amendment, as aforesaid, if it appears upon the trial of the action that the persons so named in such plea in abatement were jointly liable with the original defendant or defendants, the original defendant or defendants, shall be entitled as against the plaintiff to the costs of such plea in abatement and amendment; but if at such trial it appears that the original defendant or any of the original defendants is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment against the defendants who appear to be liable, and every defendant who is not so liable shall have judgment and shall be entitled to his costs as against the plaintiff; but the plaintiff shall be allowed such costs, together with the other costs on the plea in abatement and amendment, as costs in the cause against the original defendant or defendants who so pleaded in abatement the nonjoinder of such person; but any defendant who so pleaded in abatement, may, on the trial, adduce evidence of the liability of the defendants named by him in such plea. C. S. U. C. c. 22, s. 71.

Costs of such plea in abatement.

Judgment as regards defendants liable or not liable respectively.

**83.** The joint obligation, contract or promise may be given in evidence against any one or more of the joint obligors or contractors, and shall have the same force and effect for the recovery of judgment thereon as if it were only the obligation, contract or promise of the defendants actually sued. C. S. U. C. c. 22, s. 72.

Joint contract, &c., may be given in evidence against any one contractor.

#### JOINDER OF CAUSES OF ACTION.

**84.** Causes of action of whatever kind, provided they be by and against the same parties and in the same rights, may be

Several causes of action may be joined, sub-

ject to certain conditions.

joined in the same suit, but this shall not extend to replevin or ejectment, or in the County Courts to causes of action which are local and arise in different Counties.

2. Where two or more of the causes of action so joined in cases in the Superior Courts are local and arise in different Counties, the venue may be laid in either of such Counties. C. S. U. C. c. 22, s. 73.

Court may order separate trial.

**85.** Either of the Superior Courts or a Judge thereof, or the Judge of a County Court, may prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case any such Court or Judge may order separate records to be made up and separate trials to be had; but nothing herein contained shall restrict or diminish the obligation or right of a plaintiff to include in one action all or any of the drawers, makers, endorsers, and acceptors of any bill of exchange or promissory note. C. S. U. C. c. 22, s. 74.

Cases where a husband and wife are co-plaintiffs.

**86.** In any action brought by a man and his wife on any cause of action accruing personally to the wife, in respect of which they are properly joined as co-plaintiffs, the husband may add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the Court or a Judge thinks fit; but in case of the death of either plaintiff, such suit shall abate so far only as relates to the causes of action, if any, which do not survive. C. S. U. C. c. 22, s. 75.

#### LANGUAGE AND FORM OF PLEADINGS IN GENERAL, AND OTHER PROVISIONS IN RESPECT THERETO.

Statements which need not be proved need not be made.

**87.** All statements which need not be proved, such as the statement of time, quantity, quality and value where these are immaterial, the statement of losing and finding, and bailment in actions for goods or their value—the statements of acts of trespass having been committed with force and arms and against the peace of our Lady the Queen—the statement of promises which need not be proved, as promises in *indebitatus* counts, and mutual promises to perform agreements, and all statements of a like kind, shall be omitted. C. S. U. C. c. 22, s. 76.

Entering, dating and recording pleadings.

**88.** Every declaration or other pleading shall be entitled in the proper Court, and of the day of the month and year when the same is filed, and shall also be entered on the record made up for trial, and on the judgment roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge. C. S. U. C. c. 22, s. 77.

Profert,oyer, &c., unnecessary;

**89.** It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and, if profert be made, it shall not entitle the opposite party to crave

oyer of or to set out upon oyer, such deed or other document.  
C. S. U. C. c. 22, s. 78.

**90.** A party pleading in answer to any pleading in which any document is mentioned or referred to, may set out the whole or any part thereof which is material, and the matter so set out shall be taken to be part of the pleading in which it is set out.  
C. S. U. C. c. 22, s. 79.

But document may be set out in plea.

**91.** The plaintiff or defendant in any action may aver performance of conditions precedent generally, but the opposite party shall not deny such performance generally, and shall specify in his pleading the condition or conditions precedent the performance of which he intends to contest. C. S. U. C. c. 22, s. 80.

As to averment of performance or non-performance of a condition precedent.

**92.** The forms contained in Schedule B to this Act shall be sufficient, and those and the like forms may be used with such modifications as may be necessary to meet the facts of the case, but a departure from such forms shall not render the pleading erroneous or irregular so long as the substance is expressed without prolixity. C. S. U. C. c. 22, s. 87.

Forms in Schedule B, if observed in substance, to be sufficient.

#### DECLARATION.

**93.** A plaintiff shall be deemed out of Court unless he declares within one year after the writ of summons or *capias* is returnable. C. S. U. C. c. 22, s. 81.

Plaintiff must declare within a year.

**94.** A notice requiring the opposite party to declare, or to declare peremptorily within eight days, shall be sufficient without any rule or other demand. C. S. U. C. c. 22, s. 82.

Notice instead of rule to declare, &c.

**95.** No declaration, or pleading after declaration, shall be filed or served between the first day of July and the twenty-first day of August in any year, and the parties respectively in any case shall be entitled to the same number of days after the twenty-first day of August to plead to or answer any pleading filed or delivered before the first day of July, to which they would have been entitled had this provision not been made. C. S. U. C. c. 22, s. 83.

Declaration or pleading not to be filed or served in the long vacation.

**96.** Every declaration shall commence as follows, or to the like effect:

Commencement of declaration.

(*Venue.*) A. B. by E. F., his Attorney (*or in person, as the case may be*) sues C. D., who has been summoned (*or arrested*) by virtue of a Writ issued on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. one thousand eight hundred and \_\_\_\_\_, for (*here state cause of action*);

Form.

and shall conclude as follows, or to the like effect:

And the Plaintiff claims § \_\_\_\_\_ (*or if the action is brought to recover* Conclusion of *specification* the Plaintiff claims a return of the said goods or their value, declaration, and § \_\_\_\_\_ for their detention.

C. S. U. C. c. 22, s. 85.



Commence-  
ment after  
abatement for  
non-joinder.

**97.** If after a plea in abatement of the non-joinder of any person as defendant, the plaintiff, without having proceeded to trial on an issue thereon, amends by adding the omitted defendant or commences another action against the defendant or defendants and the person named in such plea as joint contractors, the commencement of the declaration shall be in the following form, or to the like effect :

Form.

(*Venue.*) A. B. by E. F., his Attorney (*or in person*), sues C. D. (*the Defendant originally named in the Writ*), who has been summoned (*or arrested*) by virtue of a Writ issued on the       day of       A.D. one thousand eight hundred and       , and G. H., the non-joinder of which G. H. the said C. D. has heretofore pleaded in abatement, for, &c.

C. S. U. C. c. 22, s. 86.

Declaration in  
County Courts  
not invalid  
because of the  
counts ex-  
ceeding the  
jurisdiction.

**98.** In case the damages laid at the conclusion of any declaration in a County Court do not exceed the jurisdiction of such Court, but the sums mentioned or claimed in the different counts of such declaration do in the aggregate exceed the jurisdiction of such Court, the declaration or any subsequent pleading shall not on that ground be subject to any objection, either by demurrer or otherwise, if the sum laid in each count respectively is within the jurisdiction. C. S. U. C. c. 22, s. 88.

#### PLEAS AND SUBSEQUENT PLEADINGS.

Signature of  
counsel not  
required.

**99.** The signature of counsel shall not be required to any pleading ; nor shall any wager of law be allowed. C. S. U. C. c. 22, s. 90.

Time for  
pleading in bar  
when defend-  
ant is within  
the jurisdic-  
tion.

**100.** In cases where the defendant is within the jurisdiction, the time for pleading in bar, unless extended by the Court or a Judge, shall be eight days, and a notice requiring the defendant to plead in eight days, otherwise judgment, may be endorsed on the copy of the declaration served or be delivered separately. C. S. U. C. c. 22, s. 91.

Notice to plead  
&c., sufficient.

**101.** A notice requiring the opposite party to plead, reply, or join in demurrer, (as the case may be,) within eight days, or to rejoin, or otherwise, (as the case may be,) within four days, otherwise judgment, shall be sufficient without any rule or other demand ; and such notice may be delivered separately, or be endorsed on any pleading which the other party is required to answer. 36 V. c. 9, s. 5.

Express colour  
unnecessary.

**102.** Express colour shall not be necessary in any pleading. C. S. U. C. c. 22, s. 93.

And special  
traverses.

**103.** Special traverses shall not be necessary in any pleading. C. S. U. C. c. 22, s. 94.

Certain allega-  
tions and

**104.** In a plea or subsequent pleading, it shall not be necessary to use any allegation of *actionem non* or *actionem ulterius*

*non*, or to the like effect, or any prayer of judgment; nor shall it be necessary in any replication or subsequent pleading to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment. C. S. U. C. c. 22, s. 95.

prayers not required.

**105.** No formal defence shall be required in a plea, avowry or cognizance, and it shall commence as follows, or to the like effect:

Commencement of plea.

The Defendant, by E. F., his Attorney (or in person, as the case may be), says that (*here state first defence*);

And it shall not be necessary to state in a second or other plea, or avowry or cognizance that it is pleaded by leave of the Court or a Judge, or according to the form of the statute, or to that effect, but every such plea, avowry or cognizance shall be written in a separate paragraph and be numbered, and shall commence as follows, or to the like effect:

Second plea.

And for a second (&c.) plea to (*stating to what it is pleaded*) the Defendant says that, &c. (*Here state the second plea.*)

And no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading. C. S. U. C. c. 22, s. 96.

Formal conclusions unnecessary.

**106.** Any defence arising after the commencement of any action shall be pleaded according to the fact without any formal commencement or conclusion, and any plea which does not state whether the defence therein set up arose before or after action, shall be deemed to be a plea of matter arising before action. C. S. U. C. c. 22, s. 97.

Defence arising after action, how pleaded.

**107.** In cases in which a plea *puis darrein continuance* was formerly pleadable in Banc or at Nisi Prius, the same defence may be pleaded with an allegation that the matter arose after the last pleading; but unless the Court or a Judge otherwise orders, such plea shall not be allowed unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of the plea. C. S. U. C. c. 22, s. 98.

Or after the last pleading, affidavit required with plea *puis darrein continuance*.

**108.** Except in actions for assault and battery, false imprisonment, libel, slander, when not within the fifth section of *The Act respecting Actions of Libel and Slander*, malicious arrest or prosecution, criminal conversation or debauching of the plaintiff's daughter or servant, a sole defendant in any action without rule or Judge's order, or one or more of several defendants (by leave of the Court or a Judge upon such terms as the Court or Judge thinks fit), may pay into Court a sum of money by way of compensation or amends. C. S. U. C. c. 22, s. 99.

Defendant may pay money into Court, except in certain cases.

Rev. Stat. c. 56.

**109** In cases not within the provisions of section one hundred and twenty-one, the money shall be paid to the proper officer

Officer to receive one per

cent. on  
moneys paid  
into Court.

of the Court who, for receiving the same, may exact a sum not exceeding one per cent. on the sum so paid in, and shall sign a receipt for the amount in the margin of the plea, for signing which receipt he shall be entitled to twenty cents, and the sum so paid in shall on demand be paid out to the plaintiff, or to his attorney upon a written authority from the plaintiff. C. S. U. C. c. 22, s. 100.

Such payment  
how pleaded.

**110.** Payment of money into Court shall be pleaded in all cases as nearly as may be in the following form, *mutatis mutandis*:

Form.

The Defendant, by E. F., his Attorney (*or in person,*) &c., (*if pleaded to part, say,* as to \_\_\_\_\_, parcel of the money claimed), brings into Court the sum of \_\_\_\_\_, and says the said sum is enough to satisfy the claim of the Plaintiff in respect of the matter herein pleaded to.

C. S. U. C. c. 22, s. 101.

Reply of plain-  
tiff in such  
case.

**111.** The plaintiff may reply to a plea of payment of money into Court, by accepting the sum so paid in, in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and may in that case tax his costs of suit, and in case of non-payment thereof within forty-eight hours, may sign judgment for his costs so taxed; or the plaintiff may reply that the sum paid in is not enough to satisfy his claim in respect of the matter to which the plea has been pleaded, and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit. C. S. U. C. c. 22, s. 102.

Plaintiff satis-  
fied.

Plaintiff not  
satisfied.

Plea good tho'  
it treat an al-  
leged breach  
of contract as  
a wrong, and  
*vice versa*.

**112.** In case doubts arise as to the form of pleas when causes of action may be considered to partake of the character both of breaches of contract and of wrongs, no plea good in substance shall be objectionable on the ground of its treating the declaration either as framed for a breach of contract or for a wrong. C. S. U. C. s. 22, s. 103.

Distributive  
plea to be con-  
strued distri-  
batively.

**113.** Pleas of payment and set-off, and all other pleadings capable of being construed distributively, shall be taken distributively, and if issue is taken thereon and so much thereof as is a sufficient answer to part of the causes of action is proved and found true on the trial, a verdict shall pass for the defendant in respect of so much of the causes of action as are answered, and for the plaintiff in respect of so much of the causes of action as are not answered; and if upon a plea of set-off a larger sum is on the trial proved to be due from the plaintiff to the defendant than is proved to be due from the defendant to the plaintiff, a verdict shall pass for the defendant for the balance remaining due to him, and he shall have judgment to recover such balance and his costs of suit. C. S. U. C. c. 22, s. 104.

If on set-off,  
defendant  
proves more  
due from  
plaintiff than  
to him.

**114.** A defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration, although it might have been included in a general traverse. C. S. U. C. c. 22, s. 105.

Traversing facts alleged in declaration.

**115.** A plaintiff may traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or admitting some part or parts thereof may deny all the rest, or deny any one or more allegations. C. S. U. C. c. 22, s. 106.

Traversing pleas.

**116.** A defendant may in the like manner deny the whole or part of a replication or subsequent pleading of the plaintiff. C. S. U. C. c. 22, s. 107.

Replications, &c.

**117.** Either party may plead in answer to the plea or subsequent pleading of his adversary that he joins issue thereon, which joinder of issue may be as follows, or to the like effect :

Joining issue.

The Plaintiff joins issue on the Defendant's first (&c., specifying which or what part) plea.

The Defendant joins issue upon the Plaintiff's replication to the first (&c., specifying which) plea.

And such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the plaintiff's pleading is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant. C. S. U. C. c. 22, s. 108.

Joinder how construed.

**118.** Either party may, by leave of the Court or a Judge, plead and demur to the same pleading at the same time, upon an affidavit by such party or his attorney, if required by the Court or Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and the Court or a Judge may direct which issue shall be first disposed of. C. S. U. C. c. 22, s. 109.

Pleading and demurring at the same time. Affidavit may be required.

2. The Judge of the County Court shall have the power to grant such leave in cases brought in either of the Superior Courts where the attorneys for the plaintiff and defendant both reside in the County where the action is commenced. 34 V. c. 12, s. 4.

When a County Court Judge may grant leave.

**119.** It shall be lawful to plead any number of pleas, replications, answers, cognizances or other pleading without leave of the Court or a Judge. 34 V. c. 12, s. 8.

Any number of pleas may be pleaded.



Unfair pleading may be struck out or amended.

**120.** The Court or a Judge may order any pleading so framed as to prejudice, embarrass, or delay the fair trial of the action, to be struck out, or may make such other order respecting the same, and also respecting the costs of the application, as such Court or Judge sees fit. C. S. U. C. c. 22, s. 119; 34 V. c. 12, s. 8.

Payment of money into Court.

**121.** Money to be paid at Toronto, into the Court of Queen's Bench or Common Pleas, by any person, shall be paid into some incorporated bank designated for this purpose, from time to time, by order of the Lieutenant-Governor in Council; or where there is no such bank, then into some incorporated bank in which public money of the Province is then being deposited, and which has been appointed for this purpose by any General Rule or Order made in the same manner as other General Rules or Orders of the said Courts respectively are by law directed to be made; or if no bank has been so appointed, then into any bank in which public money of the Province is then being deposited.

Procedure.

**2.** The money shall be so paid in to the credit of the cause or matter in which the payment is made, with the privity of the Clerk of the Court, and in no other manner; and such money shall only be withdrawn on the order of the Court or a Judge thereof, with the privity of the Clerk of the Court.

Withdrawal.

**3.** Where money is so paid in under a plea of payment into court, the Clerk, on the production of the receipt of the bank for the money or other satisfactory proof of such payment, shall sign a receipt for the amount in the margin of the plea;

Clerk to keep books and render statements.

**4.** The Clerk shall keep a book or books containing an account of all moneys so paid in, and of the withdrawal thereof; and shall prepare in the month of January in every year a statement of all moneys so paid in and withdrawn respectively, and a statement of the condition of the various accounts upon the thirty-first day of the preceding December, and shall transmit to the Provincial Secretary and to the Judge or each of the Judges of the Court, a copy of such statement, with a declaration thereto annexed made before a Justice of the Peace or Commissioner for taking affidavits, in the form following:

Verification of statement by Clerk.

I hereby solemnly declare that the annexed statement is a full and true statement of the moneys paid into the Court of \_\_\_\_\_ during the year 18\_\_\_\_, and that it correctly shows the state of the various accounts therein mentioned upon the thirty-first day of December last.

(Signature)

A. B.,  
Clerk.

Subscribed and declared before me, at \_\_\_\_\_,  
day of January, 18\_\_\_\_.

, this

C. D.,  
Commissioner for taking affidavits, or  
Justice of the Peace.

5. The book or books so to be kept shall be open for inspection during office hours; and the Clerk shall give a certificate of the state of any account or an extract therefrom at the desire of any party interested, or his attorney on payment of the sum of twenty cents for such inspection or certificate, and the sum of ten cents per folio for such extract, which sums shall be payable in stamps, according to the provisions of *The Act respecting Law Stamps*. 39 V. c. 7, s. 7; 40 V. c. 7, *Sched. A* (79).

Books to be open for inspection.

Fees for extracts, &c.

Rev. Stat. c. 21.

**122.** No rule of Court for leave to pay money into Court shall be necessary where a Judge's order has been made for the same purpose. C. S. U. C. c. 22, s. 111.

Rule not required.

**123.** One new assignment only shall be pleaded to any number of pleas to the same cause of action, and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from all those which the plea professes to justify, or for an excess over and above what all the defences set up in such pleas justify, or for both. C. S. U. C. c. 22, s. 115.

One new assignment only to several pleas to the same cause of action.

**124.** No plea which has already been pleaded to the declaration shall be pleaded to such new assignment, except a plea in denial, unless by leave of a Court or Judge, and such leave shall be granted only upon satisfactory proof that the repetition of such plea is essential to a trial of the merits. C. S. U. C. c. 22, s. 116.

Pleas to new assignment.

**125.** Where an amendment of any pleading is allowed, no new notice to plead thereto shall be necessary, but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever will last expire, unless otherwise ordered by the Court or a Judge; and in case the pleading amended had been pleaded to before such amendment, and is not pleaded to *de novo* within two days after amendment, or within such other time as the Court or a Judge allows, the pleading originally pleaded thereto shall, if applicable, stand and be considered as pleaded in answer to the amended pleading. C. S. U. C. c. 22, s. 117.

Time for pleading to an amended pleading, &c.

#### DILATORY PLEAS.

**126.** If a defendant pleads any dilatory plea, being matter in law and not of fact, the plaintiff may set down such plea for argument on any day thereafter on which the Court or a Judge sits for hearing such matters, giving two days' notice thereof to the defendant or his attorney; and in case the Court or Judge gives judgment for the plaintiff, he shall direct the plea to be taken off the files, with costs, to be taxed by the

Dilatory pleas, disposal of.

proper officer; and the defendant shall, within four days from the date of the order, plead an issuable plea, and rejoin gratis, and go to trial at such time as he would have been bound to go to trial in case he had pleaded such issuable plea in the first instance. C. S. U. C. c. 22, s. 118. See 37 V. c. 7, s. 17.

## DEMURRERS.

Either party may demur to the pleading of the opposite party.

**127.** Either party may object by demurrer to the pleading of the opposite party on the ground that such pleading does not set forth sufficient ground of action, defence or reply, as the case may be. C. S. U. C. c. 22, s. 120.

Form of demurrer.

**128.** The form of a demurrer shall be as follows, or to the like effect :

The Defendant (*or* Plaintiff), by his Attorney (*or* in person, &c.,) says that the declaration (*or* plea, &c.) is bad in substance ;

A substantial ground of demurrer to be stated in the margin.

and on the margin thereof some substantial matter of law intended to be argued shall be stated ; and the Court or a Judge may set aside any demurrer delivered without such statement, or with a frivolous statement, and may give leave to sign judgment as for want of a plea ;

Form of joinder in demurrer.

**2.** The form of a joinder in demurrer shall be as follows, or to the like effect :

The Plaintiff (*or* Defendant) says that the declaration (*or* plea, &c.) is good in substance.

C. S. U. C. c. 22, s. 121.

Judgment to be given according to the very right.

**129.** Where issue is joined on demurrer, the Court shall give judgment according as the very right of the cause and matter in law appears unto them, without regarding any imperfection, omission, defect in or lack of form, and no judgment shall be arrested, stayed or reversed for any such imperfection, omission, defect or lack of form. C. S. U. C. c. 22, s. 122.

Special demurrers superseded.

**130.** No pleading or amended pleading shall be deemed insufficient for any defect which formerly could only have been objected to by special demurrer. C. S. U. C. c. 22, s. 123.

## EQUITABLE PLEADINGS.

Pleading matters entitling to relief on equitable grounds.

**131.** Any party to an action at Law may, by plea or any subsequent pleading, set up facts which entitle him to relief upon equitable grounds, although such facts may not entitle him to an absolute, perpetual and unconditional injunction in a Court of Equity, and although the opposite party may be entitled to some substantive relief as against the party setting up such facts : and such plea or other subsequent pleading shall

Commencement of pleading.

begin with a statement that it is on equitable grounds. 36 V. c. 8, s. 3.

**132.** Any such matter which, had it arisen before or during the time for pleading, would have been an answer to the action by way of plea, may, if it arises after the lapse of the period during which it could have been pleaded, be set up by way of *audita querela*. C. S. U. C. c. 22, s. 125.

Defence by way of *audita querela*.

**133.** If the defendant in any suit at Law sets up any equitable defence, and judgment is given against such defendant upon such equitable defence, such judgment shall be pleadable as a good bar and estoppel against any bill filed by such defendant in Equity against the plaintiff or representative of such plaintiff at Law, in respect to the same subject matter which has been brought into judgment by such equitable defence at Law; but this section shall not be construed as declaring that such judgment at Law on an equitable defence was not before the fifteenth day of August, 1866, a good bar to a suit in Equity on the same subject matter. 29-30 V. c. 42, s. 3.

Doubts as to the effect of judgments on equitable defences removed.

Proviso.

#### PLEADINGS IN ACTIONS ON BILLS AND NOTES.

**134.** The holder of any bill of exchange or promissory note may, instead of bringing separate suits against the drawers, makers, endorsers and acceptors of such bill or note, include all or any of the parties thereto in one action, and proceed to judgment and execution in the same manner as though all the defendants were joint contractors. C. S. U. C. c. 42, s. 23.

All parties to a bill or note may be joined in one action.

**135.** In any such action, any joint drawer, maker, endorser, or acceptor, may plead in abatement the non-joinder of any other joint drawer, maker, endorser or acceptor, in the same manner as though this Act had not been passed; but no judgment to be rendered in pursuance of this Act shall be of any effect against a party not served with process. C. S. U. C. c. 42, s. 24.

Joint drawers, &c., may plead nonjoinder.

**136.** In any such action, judgment may be rendered for the plaintiff against some one or more of the defendants, and also in favour of some one or more of the defendants against the plaintiff, according as the rights and liabilities of the respective parties appear, either upon confession, default, by pleading, or on trial; and when judgment is rendered in favour of any defendant, he shall recover costs against the plaintiff in the same manner as though judgment had been rendered for all the defendants. C. S. U. C. c. 42, s. 25.

Judgment may be rendered against one or more.

**137.** The rights and responsibilities of the several parties to any such bill or note, as between each other, shall remain the same as though this Act had not been passed, saving only the rights of the plaintiff, so far as they may have been determined by the judgment. C. S. U. C. c. 42, s. 26.

Rights of parties between themselves not to be affected.



When executors of deceased defendants may be sued.

**138.** In case an action on a bill or note is brought against more than one defendant, who must otherwise have been sued separately, and it happens that any defendant dies pending the suit, an action may nevertheless be brought against the executors or administrators of such deceased defendant. C. S. U. C. c. 42, s. 28.

If one or more of several defendants absent.

**139.** Where several defendants are included in one process, under this Act, and any of them cannot be served therewith by reason of absence from or concealment within Ontario, then the action may proceed as against the other defendant or defendants without prejudice; and the plaintiff may afterwards sue the defendant separately who has not been served with process, and may recover costs as if this Act had not been passed. C. S. U. C. c. 42, s. 29.

When parties signing their initials may be proceeded against by such initials.

**140.** In case any of the parties to a bill of exchange, promissory note or other written instrument, are designated therein by the initial letter or letters, or some contraction of the Christian or first name or names, they may be designated in the same manner in an affidavit to support an application for a Judge's order to hold to bail, and in any process or declaration made, sued out, or filed against them upon or in respect of such bill, note or instrument. C. S. U. C. c. 42, s. 30.

Forms of declaring

**141.** The plaintiff in any joint action against the drawers, makers, endorsers and acceptors, or any of them, of any bill of exchange or promissory note, may, unless otherwise provided by rule of Court, declare in the words or to the effect of Forms Nos. 30 and 31 in Schedule B to this Act upon such bill or note, varying the same according to the circumstances of the case. C. S. U. C. c. 42, s. 31.

Defendants may plead set-off.

**142.** In such action, any person sued may set-off against the plaintiff any payment, claim or demand, whether joint or several, which in its nature and circumstances arises out of or is connected with the bill or promissory note that forms the subject of such joint action, or the consideration thereof, in the same manner and to the same extent as though such defendant had been separately sued; and if the jury, after allowing any demand as a set-off, still find a balance in favour of the plaintiff, they shall state in the verdict the amount which they allow to each defendant as a set-off against the plaintiff's demand. C. S. U. C. c. 42, s. 32.

When the loss of a bill or note not admissible as a defence.

**143.** In case any action is founded upon a lost bill of exchange, or other negotiable instrument, then upon an indemnity to the satisfaction of the Court or a Judge, or of any officer of the Court to whom such indemnity is referred, being given to the defendant against the claims of any other person upon him in respect of such instrument, the Court or a Judge may order that such loss shall not be set off as a defence in such action. C. S. U. C. c. 42, s. 33.

**144.** In an action brought to recover the amount of any bill, draft, order or promissory note, and the damages and interest, the expenses of noting and protesting, and all other charges and postages incurred thereon, it shall not be necessary to declare specially for such damages, interest, expenses and charges, but the same shall be allowed to the plaintiff at any trial, assessment of damages or reference, as if the same had been specially declared for. C. S. U. C. c. 42, s. 14.

Damages to be recoverable though not specially declared for.

#### PLEADINGS IN ACTIONS ON FOREIGN JUDGMENTS.

**145.** In any suit brought in Ontario on a judgment or decree obtained in the Province of Quebec in a suit in which the service of process on the defendant or party sued has been personal, no defence that might have been set up to the original suit shall be pleaded to that brought on the judgment or decree. 23 V. c. 24, s. 2.

Suit upon judgment in Quebec, where service was personal.

**146.** In any suit brought in Ontario on a judgment or decree obtained in the Province of Quebec in a suit in which personal service was not obtained and in which no defence was made, any defence that might have been set up to the original suit may be made to the suit on such judgment or decree. 23 V. c. 24, s. 4.

Suit upon judgment in Quebec, where the service was not personal.

**147.** In case of any such suit against a corporation, service of process on the officer or officers thereof named in the Act incorporating such corporation, or in case there be no officer named in the said Act, then service of process according to the law of the Province of Quebec, shall be held to be personal service under this Act. 23 V. c. 24, s. 3.

Service of process on corporations.

#### APPLICATIONS TO COUNTY JUDGES IN MATTERS OF PRACTICE IN SUPERIOR COURT CASES.

**148.** In actions in either of the Superior Courts, the Judge or acting Judge of the County Court for the County in which the action has been brought or the venue laid, may, upon the application of the plaintiff or defendant in such action, grant summonses and orders for time to declare, plead, reply or rejoin, and for particulars of demand, or of set-off, and may grant summonses and orders for payment of money into Court, for the allowance of bail, or for security for costs; and such Judge of the County Court may hear and determine such applications, grant such summonses, impose such terms, and make such orders as might be granted, imposed and made in the like cases by a Judge of one of the Superior Courts sitting in Chambers.

Judges of the County Courts may grant summonses and orders in certain matters relating to suits in the Superior Courts.

2. This section shall not apply to any action wherein the venue is laid in the County of York, or to any action wherein the attorney for the defendant, or in case of two or more defendants, where the attorney for any one or more of them resides

Except in the County of York

in a County or Union of Counties different from that in which the attorney for the plaintiff, or, if he prosecutes in person, in which the plaintiff resides. C. S. U. C. c. 22, s. 129; 34 V. c. 12, s. 5; 35 V. c. 10, s. 2.

JUDGMENTS BY DEFAULT, AND THE MODE OF ASCERTAINING THE AMOUNT TO BE RECOVERED THEREON.

No rule or order to compute necessary. **149.** No rule or order to compute shall be used. C. S. U. C. c. 22, s. 146.

Judgment by default final in certain cases. **150.** In actions where the plaintiff seeks to recover a debt or liquidated demand in money, the true cause and amount of which has been stated in the special endorsement on the writ of summons or in the declaration, judgment by default shall be final. C. S. U. C. c. 22, s. 147.

Provisions of the Imperial Act 8 & 9 W. iii, c. 11, to remain in force. **151.** Notwithstanding anything in this Act contained, the provisions of the Act of Parliament of Great Britain, passed in the Session held in the eighth and ninth years of the reign of King William the Third, entitled *An Act for the better preventing frivolous and vexatious suits*, as to the assignment or suggestion of breaches, or as to judgment, shall continue in force in Ontario. C. S. U. C. c. 22, s. 148.

Writs of inquiry not to issue to Sheriffs. When damages to be assessed. **152.** No writ of inquiry shall issue to a Sheriff in cases of judgment by default, but, except in cases where the judgment is final as aforesaid, the damages, when to be assessed by a Judge or jury, shall be ascertained at the same time and in like manner as if the parties had pleaded to issue, and the entries shall be made on the roll accordingly. C. S. U. C. c. 22, s. 149.

Taxation of Superior Court costs in cases of judgment by default on writs specially endorsed for sums over \$200 and less than \$400. **153.** In any case in either of the Superior Courts of Law where the plaintiff obtains judgment by default, on a writ specially endorsed, for a sum over two hundred dollars and less than four hundred dollars, it shall not be necessary to obtain an order to enable the Clerk or Deputy Clerk of the Crown, or officer with whom such judgment is entered, to tax Superior Court costs; but such Clerk, Deputy Clerk or Officer may, upon an affidavit being filed showing to his satisfaction that the amount was not liquidated or ascertained by the signature of the defendant, or the act of the parties, tax to the plaintiff Superior Court costs, subject to revision as in other cases. 40 V. c. 8, s. 16.

CHANGE OF VENUE.

Provision if the venue changed. **154.** The venue in any action in the Superior Courts may be changed according to the practice now in force, and notwithstanding a change of the venue, the proceedings shall continue to be carried on in the office from which the first process in the action issued; but the Court or any Judge may, on application of either party, order the issue to be tried or damages

to be assessed in any other County than that in which the venue has been laid, and for that purpose may order a suggestion to be entered on the record, that the trial may be more conveniently had or damages assessed in the County where the same is ordered to take place. C. S. U. C. c. 22, s. 89.

**155.** In all actions brought in a County Court the Judge of the County Court where the proceedings are commenced, or one of the Judges of the Superior Courts sitting at Chambers may change the venue according to the practice now in force in the Superior Courts; and in the event of an order being obtained for that purpose, the Clerk of the County Court where the action was commenced shall forthwith transmit all papers in the cause to the Clerk of the County Court to which the venue is changed, and all subsequent proceedings shall be entitled in such last mentioned Court, and carried on in such last mentioned County as if the proceeding had originally been commenced in such last mentioned Court. 34 V. c. 12, s. 3; 35 V. c. 10, s. 1.

Judge of  
County Court  
may change  
venue.

#### PRELIMINARY EXAMINATION OF PARTIES, &C.

##### *Discovery.*

**156.** Any party to an action at law, whether plaintiff or defendant, may at any time after such action is at issue, obtain an order for the oral examination, upon oath, before a Judge or any other person specially named by the Court or a Judge, of any party adverse in point of interest, or in case of a body corporate of any of the officers of such body corporate, touching the matters in question in the action; and any party or officer examined, may be further examined on his own behalf, or on behalf of the body corporate of which he is an officer, in relation to any matter respecting which he has been examined in chief; and when one of several plaintiffs or defendants has been examined, any other plaintiff or defendant united in interest may be examined in his own behalf or on behalf of those united with him in interest, to the same extent as the party examined.

Parties and  
others adverse  
in interest may  
be examined.

2. Such explanatory examination shall be proceeded with immediately after the examination in chief, and not at any future period except by leave of the Court or a Judge; and for the purposes of this section, when the officer of a body corporate has been so examined as aforesaid on behalf of such body corporate, such body corporate shall be deemed to be fully represented by such officer. 36 V. c. 8, s. 24.

**157.** Where the attorneys of the plaintiff and defendant reside in the same County, an order for oral examination under the preceding section in any action pending in either of the Superior Courts of Law, may be made by the Judge of the County

Order for oral  
examinations  
when attor-  
neys reside in  
same county.



Court of the said County ; but this section shall not apply to the County of York. 37 V. c. 7, s. 36.

Order for examination, how obtained.

**158.** The order for the examination of a party adverse in point of interest, or of the officer of a corporation, referred to in section one hundred and fifty-six of this Act, shall be granted as of course upon the production, by the party purposing to examine, of an affidavit of such party, or of his attorney or agent, stating that the deponent believes that the party purposing to examine whether plaintiff or defendant, will derive material benefit in the action or other proceeding from such examination, that there is good cause of action, or of defence, upon the merits, and, if the application is made on the part of the defendant, that the examination is not sought for the purpose of delay. 36 V. c. 8, s. 29.

Examination before certain officers without an order.

**159.** The examination may be had before a Deputy Clerk of the Crown, or Special Examiner or local Master in Chancery, without an order, but in such case the Deputy Clerk or Special Examiner or local Master, upon the affidavit hereinbefore required being filed with him, may issue an appointment for the examination of the party, and he shall return or keep (as the case may require) the said affidavit with the depositions taken under the said appointment; and the party purposing to examine may serve the party to be examined with a subpoena and a copy of the appointment. 40 V. c. 7, *Sched. A* (80).

Notice to party to be examined and his attorney.

**160.** The party so examining as aforesaid, shall cause a copy of the order and appointment (or of the appointment where no order is required) to be served upon the person so to be examined, and upon his attorney, where he has appeared by attorney, at least forty-eight hours before the hour appointed for the examination, and shall pay to the person so to be examined the proper charges for conduct money. 40 V. c. 7, *Sched. A* (81).

Examinations how to be had

**161.** Any party or person to be examined orally under the provisions of this Act shall be so examined before the Judge or other person specially named in the order for examination, or, where no order is required, before the Deputy Clerk of the Crown or Special Examiner or local Master in Chancery; and shall, if so required by notice, produce on the examination all books, papers, and documents which he would be bound to produce at the trial under a *subpœna duces tecum*; and the party or person so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination and re-examination shall be conducted as nearly as may be in the mode now in use in Courts of Common Law on a trial at Nisi Prius, or in Chancery at the hearing of a cause. 36 V. c. 8, s. 25.

**162.** Any party or person refusing or neglecting to attend at the time and place appointed for his examination, or refusing to be sworn or to answer any lawful question put to him by the examiner or by any party entitled so to do, or his counsel, attorney or agent, shall be deemed guilty of a contempt of Court and proceedings may be forthwith had by attachment. 36 V. c. 8, s. 30.

Penalty on witness refusing to attend or answer, &c.,

**163.** If the party or person under examination demurs or objects to any question or questions put to him, the question or questions so put, and the demurrer or objection of the witness thereto, shall be taken down by the examiner and transmitted by him to the office of the Court, to be there filed; and the validity of such demurrer or objection shall be decided by the Court or a Judge; and the costs of and occasioned by such demurrer or objection shall be in the discretion of the Court or Judge. 36 V. c. 8, s. 30.

demurrer to questions.

**164.** The depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, expressed in the first person; and when completed shall be read over to the party examined, and shall be signed by him in the presence of the parties, or of such of them as may think fit to attend.

Depositions, how to be taken down.

2. In case the party or person examined refuses or is unable to sign the said depositions, then the examiner shall sign the same; and the examiner may upon every examination state any special matter to the Court if he thinks fit.

Signing depositions.

3. It shall be in the discretion of the examiner to put down any particular question or answer, if there appears to be any special reason for so doing, and any question or questions objected to shall at the request of either party be noticed or referred to by the examiner in or upon the depositions; and he shall state his opinion thereon to the counsel, attorneys, agents or parties, and if requested by either party, he shall on the face of the depositions refer to such statement. 36 V. c. 8, s. 26.

Taking down questions.

**165.** Wherever, by virtue of this Act, an examination of any party or parties, witness or witnesses, has been taken before a Judge of either of the Superior Courts or of any County Court, or before any officer or other person appointed to take the same, the depositions taken down by the examiner shall be returned to and kept in the office of the Court (Principal or Deputy Clerk's or Clerk's office, as the case may be) in which the proceedings are carried on; and office copies of such depositions may be given out, and the examinations and depositions certified under the hand of the Judge or other officer or person taking the same, or a copy thereof certified under the

Examination to be filed in the office of the Court.

May be used in evidence.

hand of the Clerk or Deputy Clerk of the Crown, or Clerk of the County Court, as the case may be, shall, without proof of the signature, be received and read in evidence, saving all just exceptions. C. S. U. C. c. 22, s. 193; 36 V. c. 8, s. 27; 40 V. c. 7, *Sched. A* (82).

Examiners  
may make a  
special report  
to the Court.

**166.** Every Judge, officer or other person taking examinations under this Act, may, and if need be shall, make a special report to the Court in which such proceedings are pending, touching such examination and the conduct or absence of any witness or other person thereon or relating thereto; and the Court shall institute such proceedings and make such order upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court. C. S. U. C. c. 22, s. 194.

Orders there-  
upon.

As to costs of  
rule and ex-  
amination.

**167.** The costs of every application for any order to be made for the examination of parties or witnesses by virtue of this Act, and of the order and proceedings thereon, shall be in the discretion of the Court or Judge by whom such order is made. C. S. U. C. c. 22, s. 195.

### *Inspection of Real Property by Jury, &c.*

Inspection of  
real or person-  
al property by  
jury, parties or  
witnesses.

**168.** Either party may apply to the Court or a Judge for a rule or order for the inspection by the jury or by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute, and the Court or a Judge may make such rule or order upon such terms as to costs and otherwise, as such Court or Judge may think fit; but nothing herein contained shall affect the provisions of any Act as to obtaining a view by a jury. C. S. U. C. c. 22, s. 196.

### *Discovery of Documents.*

Provision for  
the discovery  
of documents  
in the posses-  
sion of the ad-  
verse party.

**169.** Upon the application of any party to a cause or civil proceeding stating his belief upon affidavit that any document to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, the Court or Judge may order that the party against whom such application is made, or if such party is a body corporate, that some named officer of such body corporate shall answer on affidavit, stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so, on what grounds) to the production of such as are in his or their possession or power, and upon such affidavit being made, the Court or Judge may make such further order as is just. C. S. U. C. c. 22, s. 189.

*Inspection of Documents.*

**170.** Either of the Superior Courts and any County Court in which an action or legal proceeding is pending, or any Judge thereof respectively in Vacation, may, on application (and in any such action or proceeding in either of the Superior Courts, where the attorneys for both parties reside in the same County, the Judge of the County Court of such County may on application), compel the opposite party to allow the party making the application, to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding, and, if necessary, to take examined copies of the same, in all cases in which previous to the fifth day of December, 1859, a discovery might have been obtained by bill, or other proceeding in Equity, at the instance of the party so making application as aforesaid. C. S. U. C. c. 22, s. 197.

When the Court or a Judge may allow inspection of documents.

*Admission of Documents.*

**171.** Either party may call upon the other party, by notice, to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the Judge certifies that the refusal to admit was reasonable; and except in cases where the omission to give the notice is, in the opinion of the Taxing Officer, a saving of expense, no costs of proving any document shall be allowed unless such notice has been given. C. S. U. C. c. 22, s. 198.

Calling on parties to admit documents.

Costs.

**172.** An affidavit of the attorney in the cause or his clerk, of the due signature of any admission made in pursuance of such notice, and annexed to such affidavit, shall be in all cases sufficient evidence of such admissions. C. S. U. C. c. 21, s. 199.

Evidence of admissions.

**173.** An affidavit of the attorney in the cause or his clerk, of the service of any notice to produce in respect to which notice to admit has been given, and of the time when it was served, with a copy of such notice to produce annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served. C. S. U. C. c. 22, s. 200.

Evidence of service of notice to produce.

**EVIDENCE ON SUMMARY, &c., APPLICATIONS AND PROCEEDINGS.**

**174.** Upon motions founded on affidavits, either party, with leave of the Court or a Judge, may make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such Rules as have been or may be made respecting such affidavits. C. S. U. C. c. 22, s. 183.

Affidavits on new matter in answer to affidavits.



Court or Judge may, on hearing any motion or summons, order the production of documents or *viva voce* examinations.

And may make rule or order thereon.

Power by rule or order to compel attendance of witnesses or production of documents in such cases.

Disobedience to be a contempt of Court.

Witnesses to be paid expenses.

What documents need not be produced.

Examinations may be adjourned.

**175.** Upon the hearing of any motion or summons, before either of the Superior Courts or any Judge thereof having jurisdiction in the case, such Court or Judge at discretion, and upon such terms as it or he thinks reasonable, may from time to time order to be produced such documents as it or he thinks fit, and may order such witnesses as it or he thinks necessary, to appear and be examined *viva voce* before such Court or Judge, or before a Judge of any County Court, or before any Clerk or Deputy Clerk of the Crown and upon reading the report of the Judge of the County Court, or Clerk or Deputy Clerk of the Crown, as the case may be, or if no such reference is made, then upon examining such documents or hearing such witnesses by the Court or Judge in which, or before whom such motion or summons is pending, the Court or Judge may make such rule or order as seems just; and in cases within the jurisdiction of a County Court, the Court or a Judge therein having jurisdiction in the case, may order the production of documents or the attendance of witnesses before such Court or Judge, or before the Clerk of such County Court, and upon hearing such evidence or reading the report of the Clerk, may make such order as seems just, in like manner as if such proceedings were had in one of the Superior Courts. C. S. U. C. c. 22, s. 184.

**176.** Any such Court or Judge may, by such rule or order, or by any subsequent rule or order, command the attendance of the witnesses named therein for the purpose of being examined, or may command the production of any writings or other documents, to be mentioned in such rule or order, and in the case of a Judge, he may, if necessary or convenient so to do, direct the attendance of any such witness to be at his own place of abode or elsewhere. C. S. U. C. c. 22, s. 185.

**177.** If in addition to the service of the rule or order an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, is also served together with or after the service of such rule or order, the wilful disobedience of any such rule or order shall be a contempt of Court, and the order in the case of a Judge's order having been made a rule of Court, proceedings may be forthwith had by attachment. But—1. Every person whose attendance is so required, shall be entitled to the like payment for attendance and expenses as if he had been subpoenaed to attend upon a trial; 2. And no person shall be compelled to produce under any such rule or order, any writing or other document that he would not be compellable to produce at the trial of the cause; 3. And the Court or Judge, or person appointed to take the examination, may adjourn the same from time to time as occasion may require. C. S. U. C. c. 22, s. 186.

**178.** The Sheriff, gaoler, or other officer having the custody of any prisoner shall take such prisoner for any examination under the authority of this Act, by virtue of a rule of the Court or an order of a Judge, to be issued for that purpose; which rule or order may be issued by the Court or Judge under such circumstances as appear to warrant the production of such prisoner. C. S. U. C. c. 22, s. 187; 36 V. c. 8, s. 28.

How prisoners may be brought to give evidence.

**179.** Any party to a civil action or other civil proceeding requiring the affidavit of a person who refuses to make it, may apply by summons for an order upon such person to appear and be examined upon oath before a Judge, or any other person to be named in the order to whom it may be most convenient to refer the examination, as to the matters concerning which he has refused to make an affidavit, and a Judge may, if he thinks fit, make such order for the attendance of such person for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, before the person therein appointed to take the examination, and may therein impose such terms as to such examination and the costs of the application and proceedings thereon as he thinks just, and such order shall be proceeded upon in like manner as the order mentioned in the one hundred and seventy fifth and one hundred and seventy-sixth sections of this Act. C. S. U. C. c. 22, s. 188.

Persons refusing to make affidavit may be compelled to appear and be examined or to produce papers.

**180.** Wherever the plaintiff or defendant in any suit instituted in either of the Superior Courts, wishes to produce to either of such Courts or to any Judge thereof, the writ, declaration, plea, or any other proceeding filed in the cause in the office of any Deputy Clerk of the Crown, the plaintiff or defendant may demand and receive from such Deputy Clerk a copy of the same certified by the said Deputy to be a true copy of the original, and such copy so certified shall be received by such Court or Judge, in all cases, in lieu of the original, and as a proof thereof. C. S. U. C. c. 22, s. 128.

Certified copies of proceedings may be obtained from any Deputy Clerk's office.

#### PROVISIONS FOR THE DETERMINATION OF QUESTIONS RAISED BY THE CONSENT OF THE PARTIES WITH OR WITHOUT PLEADINGS.

**181.** In case the parties to an action, after writ issued and before judgment, are agreed as to the question or questions of fact to be decided between them, a Judge, by consent of parties, and upon being satisfied that they have a *bona fide* interest in the decision of the question or questions, and that the same is or are fit to be tried, may order that such parties may proceed to the trial of such question or questions of fact without formal pleadings, and such question or questions may be stated for trial in an issue in the words or to the effect of Form No. 8, in Schedule A to this Act, and the issue may be entered for trial and tried accordingly in the same manner as an issue joined in an ordinary action, and the proceedings in such action and issue shall be

Parties may agree upon an issue of fact and try it.

Form of stating questions and trial of issue thereon.

under and subject to the ordinary control and jurisdiction of the Court as in other actions. C. S. U. C. c. 22, s. 150.

And may enter into agreement to pay money or not, according to the result.

**182.** The parties may, if they think fit, enter into an agreement in writing, which shall be embodied in the said or any subsequent order, that upon the finding of the jury in the affirmative or negative of such issue or issues, a sum of money to be fixed by the parties, or to be ascertained by the jury upon the issue or issues and evidence submitted to them, shall be paid by one of such parties to the other of them, either with or without the costs of the action. C. S. U. C. c. 22, s. 151.

Judgment may be entered and execution issued, &c., upon the finding.

**183.** Upon the finding of the jury upon any such issue, judgment may be entered for the sum agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge otherwise orders for the purpose of giving either party an opportunity for moving to set aside the verdict or for a new trial. C. S. U. C. c. 22, s. 152.

Proceedings may be recorded, &c.

Effect of Judgment.

**184.** The proceedings upon any such issue may be recorded at the instance of either party; and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. C. S. U. C. c. 22, s. 153.

Parties may agree upon a special case without pleadings.

**185.** The parties may, after writ issued and before judgment, by consent and by order of a Judge, without any pleadings, state any question or questions of law in a special case for the opinion of the Court. C. S. U. C. c. 22, s. 154.

And may agree to pay or not to pay money according to the decision upon such case, &c.

**186.** The parties may, if they think fit, enter into an agreement in writing, which shall be embodied in the aforesaid or any subsequent order, that upon the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by such special case, a sum of money fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of such parties to the other of them, either with or without costs of the action, and the judgment of the Court may be entered for any sum so fixed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed by proceedings in error or appeal. C. S. U. C. c. 22, s. 155.

Costs where there is no agreement about them.

**187.** In case no agreement is entered into as to the costs of any such action, the costs shall follow the event, and be recovered by the successful party. C. S. U. C. c. 22, s. 156.

After issue joined, the parties may agree upon a special case for

**188.** After issue joined in any action or information, the parties may, by consent and by order of a Judge of the Court in which the action is depending, state the facts of the case, in the form of a special case, for the opinion of the Court, and agree

that a judgment shall be entered for the plaintiff by confession the opinion of or for the defendant of *nolle prosequi*, immediately after the the Court. decision of the case, or otherwise, as the Court may think fit, and judgment shall be entered accordingly. C. S. U. C. c. 22, s. 157.

PROVISIONS FOR THE MORE EXPEDITIOUS DETERMINATION OF  
MATTERS OF MERE ACCOUNT BY REFERENCE TO REFER-  
EES OR ARBITRATORS.

*In cases in the Superior Courts.*

**189.** If at any time after the writ has issued, and before the record has been entered for trial, it is upon the application of either party made to appear to the satisfaction of the Court or a Judge that the matters in dispute consist wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, the Court or Judge may upon such application, if it or he thinks fit, decide such matter in a summary manner, or order such matter, either wholly or in part, to be referred to the Master or any Local Master of the Court of Chancery, or to the Judge of any County Court, or to any Referee appointed by the parties who consents in writing to accept such reference, upon such terms as to costs and otherwise as such Court or Judge thinks reasonable; and the decision or order of such Court or Judge, so soon as given or made, or the report or certificate of such Master, County Judge or other Referee, when confirmed as hereinafter provided, may be enforced by the same process as the finding of a jury upon the matter referred. 39 V. c. 28, s. 1.

Summary decision or reference after writ and before record entered in matters of account.

**190.** If it appears to the Court or Judge that the allowance or disallowance of any particular items in such account depends upon a question of law proper to be decided by the Court, or upon a question of fact proper to be decided by a jury, such Court or Judge may direct a case to be stated or issues to be tried; and the decision of the Court upon such case, and the finding of the jury upon such issues shall be taken and acted upon by the Master, County Judge, or other Referee, as conclusive. C. S. U. C. c. 22, s. 159.

Any incidental question of law may be decided by the Court, or one of fact by a jury upon a special case or issue.

**191.** Where an order is made under the one hundred and eighty-ninth section, the Master, County Judge or other Referee to whom the reference is directed, shall proceed therein; and the depositions of the witnesses examined upon such reference shall be taken down in writing, and shall, forthwith after the making of the report or certificate, together with the exhibits referred to therein, and the said report or certificate, and upon payment of the fees of such Master, County Judge or Referee, be filed by the said Master, County Judge or Referee with the officer

Procedure on reference.

Filing of depositions, certificate, &c.



of the Court with whom the præcipe for the said writ was filed, except in the cases mentioned in sub-section two of this section.

Filing of  
papers at  
Toronto.

2. In cases in either of the Superior Courts where the depositions report or certificate and other papers are required to be filed in the City of Toronto, they shall be so filed in the office of the Clerk of the Crown of the Court in which the action is depending.

Report or  
certificate to  
become abso-  
lute unless ap-  
pealed from.

3. Such report or certificate shall, without an order confirming the same, become absolute at the expiration of fourteen days from the filing thereof unless appealed from, but the Court or Judge may under special circumstances allow an appeal after the fourteen days. 39 V. c. 28, s. 2; 40 V. c. 7, *Sched. A* (83).

Appeal from  
report under  
s. 191.

**192.** The appeal from a report or certificate referred to in the next preceding section of this Act shall be to the Court in which the said action was begun, and may be heard before and decided by a Judge of either of the Superior Courts, in or out of Term, and the practice to be observed upon any such appeal shall be the practice now observed in appeals from the report of a Master in Chancery; and such Judge may upon such appeal either amend the said report or certificate in any way and to any extent that he may deem proper, or refer the same back to the said Master, County Judge or other Referee for amendment in whole or in part, with such directions as to law or fact as he may deem proper, or he may confirm the same. 39 V. c. 28, s. 7.

Practice.

Amendment of  
certificate.

Transmission  
of papers for  
purposes of  
appeal.

**193.** The officer of the Court with whom any depositions and report or certificate taken or made under the provisions of this Act have been filed, shall, for the purpose of any such appeal or motion, within twenty-four hours after notice in writing delivered to him in his office for that purpose and payment of the necessary postage, enclose, seal up and transmit by post to the proper principal office in Toronto, addressed to the Clerk thereof, such depositions and report or certificate, together with all exhibits and papers filed therewith; and after such appeal or motion has been disposed of, any party thereto may in like manner procure such depositions, report or certificate, exhibits and papers to be returned to the officer of the Court with whom they were originally filed. 39 V. c. 28, s. 3.

Return of  
papers.

Fees to the  
Judge and  
Master.

**194.** Where the reference is made to the County Judge or the Master in Chancery, such person shall be entitled to take and receive to his own use the same fees as the Local Masters of the Court of Chancery are entitled to receive upon a reference from the Court of Chancery. 39 V. c. 28, s. 9.

In actions  
involving long  
accounts,

**195.** In all actions involving the investigation of long accounts on either side, the Judge may at and during the trial

direct a reference of all issues of fact in the cause to arbitration, or of such of the said issues and of the accounts and matters involved in all or any of such issues as he thinks fit, taking the verdict of the jury upon any issue or issues not so referred, and directing a verdict to be entered generally, on all or any of the issues, for either party, subject to such reference; or he may leave all or any issues of fact to be found by the jury, referring only the amount of damages to be ascertained; and if the parties agree upon the Arbitrators (not more than three), the names of those agreed on shall be inserted in the order of reference, but if the parties cannot agree, the Judge shall name the Arbitrator or Arbitrators, and appoint all other terms and conditions of the reference to be inserted in such order; And the Judge directing any reference under this section may direct such reference (if he sees fit to do so) in like manner as he has power to do under sections one hundred and eighty-nine and one hundred and ninety; and every Arbitrator appointed under this section shall be subject to the provisions of the said sections, and shall have the powers expressed in the one hundred and ninety-seventh section, and be subject to the same regulations as are mentioned and provided in regard to Arbitrators in and by the two hundred and twelfth section of this Act. C. S. U. C. c. 22, s. 160.

Judge may direct a reference as to part and a verdict as to other parts, &c., or leave the whole to the jury.

Appointment of arbitrators in referred cases.

2. An appeal shall lie against an award or report made on a reference under this section, in the same way as if the reference had been made under section one hundred and eighty-nine. 40 V. c. 8, s. 20.

Appeal from award.

**196.** Upon any order of reference made under the provisions of the one hundred and ninety-fifth section of this Act, the depositions of the witnesses examined upon such reference shall be taken down in writing, and shall forthwith after the making of the award, together with the exhibits referred to therein, be filed by the Arbitrator or Arbitrators with the officer of the Court with whom the præcipe for the writ of summons in the action or any of the actions in which the said order was made, is filed, except in the cases in sub-section two of this section mentioned. 39 V. c. 28, s. 4.

Upon references under s. 195, depositions to be in writing and filed.

2. In cases in either of the Superior Courts where the depositions and exhibits and other papers are required to be filed in the City of Toronto, they shall be so filed in the office of the Clerk of the Crown of the Court in which the action is depending. 40 V. c. 7, *Sched. A* (83).

**197.** In actions in which it appears to the Court or a Judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation, it shall not be necessary to assess the damages by a Judge or jury, but the Court or a Judge may direct that the amount for which final judgment is to be signed, shall be ascertained (if the proceedings are carried on in the principal office at Toronto) by the Clerk of the Crown

How the amount of damages shall be ascertained when the Court is of opinion that it is substantially a matter of calculation.

and Pleas of the proper Court, or (if the proceedings are carried on in the Deputy Clerk's office in any County) then by the Judge of the County Court of such County—or (if the proceedings are carried on in any County Court) then by the Clerk thereof; and the attendance of witnesses and the production of documents before such Clerk of the Crown, or Judge or Clerk of the County Court, may be compelled by *subpoena*, in the same manner as before a Judge or jury upon an assessment of damages; and such Clerk of the Crown or Judge or Clerk of the County Court, respectively, may appoint the day for hearing the case, and may adjourn the inquiry from time to time, as occasion requires; and such Clerk of the Crown, or Judge or Clerk of the County Court, as the case may be, shall endorse upon the rule or order for referring the amount of damages to him, the amount found by him, and shall deliver the rule or order with such endorsement to the plaintiff, and the like proceedings may thereupon be had, as to taxation of costs, signing judgment and otherwise, as upon the finding of a Judge or Jury upon an assessment of damages. C. S. U. C. c. 22, s. 161.

Appeal.

2. An appeal shall lie against a finding under this section in the same manner as from a report or certificate on a reference made under section one hundred and eighty-nine. 40 V.c. 8, s. 20.

*In cases in the County Courts.*

County Courts may order references as in Superior Courts.

**198.** In any County Court, the Judge thereof may, in Term, or at the sittings or in Vacation, order any cause to be referred in the same manner, with the same effect and with the same powers, as may be exercised by the Superior Courts in any cause therein. C. S. U. C. c. 22, s. 175; 40 V. c. 7, *Sched. A* (85).

Appeals and motions to set aside awards in County Courts.

**199.** In any County Court in which an order of reference is made, an appeal, in like manner and within the same time as in like cases is provided with regard to actions in the Superior Courts, shall lie to the Judge of the said County Court, who shall upon such appeal have the same powers as may be exercised by a Judge in like cases in the Superior Courts; and upon any motion made to a County Court to set aside an award in cases which an appeal does not lie, the Judge thereof shall have the same powers as may be exercised by the Superior Courts or a Judge thereof in like cases. 39 V. c. 28, s. 8; 40 V. c. 8, ss. 22 & 23.

Appeals to the Court of Appeal from decision of County Court Judge.

**200.** An appeal shall lie from any order, judgment, or decision of the County Court Judge to the Court of Appeal, and the proceedings and practice on such appeal as to staying proceedings, giving security and otherwise, shall be similar to the proceedings and practice relating to appeals from County Courts to the Court of Appeal. 40 V. c. 7, *Sched. A* (84).

*Voluntary Submissions to Arbitration.*

**201.** Every agreement or submission to arbitration by consent, whether by deed, or in writing not under seal, may, on the application of any party thereto, be made a rule or order of any of the Superior Courts of Law, or Equity or of a County Court in actions pending in such County Court, unless such agreement or submission contains words purporting that the parties intended that it should not be made a rule or order of Court. C. S. U. C. c. 22, s. 176.

Every submission to arbitration may be made a rule of Court, unless the instrument forbids it.

**202.** If in any such agreement or submission it is provided that the same may be made a rule or order of one in particular of the said Superior Courts of Law or Equity, it shall be made a rule or order of that Court only; and if, where there is no such provision, a case has been stated for the opinion of one of the said Superior Courts, and such Court is specified in the award, and the document authorizing the reference has not before the publication of the award to the parties been made a rule or order of Court, such document shall be made a rule or order only of the Court specified in the award. C. S. U. C. c. 22, s. 177.

Of what Court it may be made a rule.

**203.** Where in any case the document authorizing the reference is made a rule or order of any one of such Superior Courts of Law or Equity no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award. C. S. U. C. c. 22, s. 178.

Other Courts not to interfere.

**204.** In case of the appointment of any Referee, Arbitrator or Umpire by, or in pursuance of any rule or order of any of the Superior Courts of Law or Equity, or of any County Court, or Judge's order, or order of Nisi Prius in any action, or by or in pursuance of any submission or reference, not containing words purporting that the parties intended that such agreement should not be made a rule or order of any of such Superior Courts, the power and authority of such Referee Arbitrator shall not be revocable by any party to the reference, without the leave of the Court by which such rule or order was made, or which is mentioned in the submission, or by leave of a Judge of such Court; or in case no such Court is mentioned in the submission and there is no restriction of jurisdiction as aforesaid, then not without the leave of one of such Superior Courts, or of a Judge thereof, and the Referee Arbitrator and Umpire shall proceed with the reference notwithstanding any such revocation, and make an award, although the person making such revocation does not afterwards attend the reference; and the Court, or any Judge thereof, as the case may be, may, from time to time, enlarge the time for any such Referee or Arbitrators to make their award. C. S. U. C. c. 22, s. 179.

Submission to arbitration if agreed to be made a rule of Court, not revocable without leave of Court.

Arbitrator to proceed with reference.

Court may enlarge time for making an award.

**205.** In the case of a voluntary reference to arbitration, where it is agreed by the terms of the submission that there may be an appeal to one of the Superior Courts, this Act shall apply

This Act to apply on voluntary reference and



agreement that appeal may lie.

and the reference shall be conducted, and an appeal shall lie in the same manner as in case of a reference under section one hundred and eighty-nine. 39 V. c. 28, s. 10.

*Motion to set aside Awards.*

Cases in which an appeal does not lie.

**206.** In cases in which an appeal does not lie under this Act, a motion to set aside an award may be made in the same manner as heretofore. 40 V. c. 8, s. 23.

*Miscellaneous Provisions.*

Copies of documents used as evidence may be filed in lieu of original.

**207.** The Master, County Judge, Referee, Arbitrator or Arbitrators to whom a reference is made, upon the application of any party, and where no special reason appears to him or them to exist for filing any original book, paper or document as an exhibit, as hereinbefore provided, may at the close of the reference, and before the said exhibits are so filed, allow a sworn copy of any such original book, paper or document which has been given in evidence before him upon such reference, or of such portions thereof as he may deem material to be substituted as an exhibit in the place of any such original book, paper or document. 39 V. c. 28, s. 6.

Production of exhibits on appeals or motions to set aside awards.

**208.** Upon any appeal or motion to set aside an award, any party may by notice require any other party to produce, and the party so required shall produce upon the hearing of the said appeal or motion any original book, paper or document in his possession which has been used as an exhibit or given in evidence upon the reference, and which has not been filed with the depositions. 39 V. c. 28, s. 7, *last part*.

Period within which application to set aside award must be made.

**209.** All applications, otherwise than by way of appeal, to set aside any award made on a compulsory reference under this Act, shall be made within the first six days of the Term next following the publication of the award to the parties, whether the award be made in Vacation or in Term; and if no such application is made or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties. C. S. U. C. c. 22, s. 165.

When an award may, by order of a Judge be enforced, after the expiration of six days.

**210.** Any award, report or certificate made on a compulsory reference may, by authority of a Judge, on such terms as to him seem reasonable, be enforced at any time after six days from the time of publication or filing, notwithstanding that the time for moving to set it aside or for appealing has not elapsed. C. S. U. C. c. 22, s. 166.

Arbitrator may make award in the form of a special case.

**211.** Upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the Superior Courts of Law or Equity, and upon any reference under this Act, in any cause in a County Court made by rule or order of such Court, the Referee or Arbitrator may, if he thinks fit, and if it is not provided to the contrary, state his award as to the whole or any part thereof, in the form of a special case for the

Effect thereof.

opinion of the Court, and where an action has been referred, judgment, if so ordered, may be entered according to the opinion of the Court. C. S. U. C. c. 22, s. 162.

**212.** The proceedings upon any such arbitration as last aforesaid shall, except otherwise directed by this Act or by the submission or document authorizing the reference, be conducted in like manner and be subject to the same rules and enactments as to the power of the Arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, or otherwise, as upon a reference made by consent under a rule of one of the Superior Courts or the order of a Judge thereof. C. S. U. C. c. 22, s. 163.

Proceedings before arbitrator, and his power to be as upon reference by consent.

**213.** In case, in any reference to arbitration, whether under this Act or otherwise, the submission is made a rule of any Court, such Court or a Judge thereof may, at any time, and from time to time, remit the matters referred, or any or either of them, to the reconsideration and re-determination of the Arbitrator or Arbitrators or Umpire, as the case may require, upon such terms as to costs and otherwise as to the said Court or Judge seem proper. C. S. U. C. c. 22, s. 164.

When the reference is made a rule of Court, case may be remitted to the arbitrators for reconsideration, &c.

**214.** Wherever the parties or any of the parties to any deed or instrument in writing agree that any existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so having agreed or any person or persons claiming through or under him or them, nevertheless commences an action at Law or a suit in Equity against the other party or parties or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred or any of them, then upon the application of the defendant or defendants, or any of them, after appearance and before plea or answer, and upon the Court or Judge being satisfied that no sufficient reason exists why such matters ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, the Court in which such action or suit has been brought or a Judge thereof may make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such Court or Judge seem proper; but such rule or order may, at any time afterwards, be discharged or varied as justice requires. C. S. U. C. c. 22, s. 167.

When parties to any instrument agree that any difference between them shall be referred to arbitration, the Court or a Judge may stay proceedings on application of defendant and proof of certain matters.

**215.** If in any case of arbitration, the document authorizing the reference provides that the reference shall be to a single Arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an Arbitrator, or if any appointed Arbitrator refuses to act, or becomes incapable of act-

Provision for supplying the place of a single arbitrator or umpire dying, refusing to act, &c.

when the reference does not show an intention that his place should not be supplied.

A Judge to appoint another in default of the proper party.

ing, or dies, and the terms of the document do not show the intention that such vacancy should not be supplied, and the parties do not concur in appointing a new Arbitrator, or if, where the parties or two Arbitrators are at liberty to appoint an Umpire or third Arbitrator, such parties or Arbitrators do not appoint an Umpire or third Arbitrator, or if any appointed Umpire or third Arbitrator refuses to act, or becomes incapable of acting, or dies, and the terms of the document authorizing the reference do not show the intention that such vacancy should not be supplied, and the parties or Arbitrators respectively do not appoint a new one, then and in every such instance any party may serve the remaining parties or the Arbitrators, as the case may be, with a written notice to appoint an Arbitrator, Umpire or third Arbitrator; and if within seven clear days after service of such notice, no Arbitrator, Umpire or third Arbitrator is appointed, any Judge of either of the Superior Courts of Law, or of the Court of Chancery, or of any County Court, if the case be in such County Court, may, upon summons, to be taken out by the party who served such notice, appoint an Arbitrator, Umpire or third Arbitrator, as the case may be, and such Arbitrator, Umpire or third Arbitrator may act in the reference and make an award as if he had been appointed by consent of all parties. C. S. U. C. c. 22, s. 168.

When the reference is to two arbitrators and one party neglects to appoint, the other may, after certain notice, &c., appoint his arbitrator to act alone, unless the reference provides that the vacancy should not be supplied.

**216.** Where the reference is or is intended to be to two Arbitrators, one appointed by each party, either party, in case of the death, refusal to act or incapacity of any Arbitrator appointed by him, may substitute a new Arbitrator, unless the document authorizing the reference shows an intention that the vacancy should not be supplied, and if on such a reference one party fails to appoint an Arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party has appointed an Arbitrator, and has served the party so failing with notice in writing to make the appointment, the party who has appointed an Arbitrator may appoint such Arbitrator to act as sole referee in the reference, and an award made by him shall be as binding on both parties as if the appointment had been by consent; but the Court or a Judge may revoke such appointment on such terms as seem just. C. S. U. C. c. 22, s. 169.

Two arbitrators may always appoint an umpire, unless the reference forbids it.

**217.** Where the reference is to two Arbitrators and the terms of the document which authorizes it do not show an intention that there should not be an Umpire, or do not provide otherwise for the appointment of an Umpire, the two Arbitrators may appoint an Umpire at any time within the period during which they have power to make an award, unless they are called upon by notice as aforesaid to make the appointment sooner. C. S. U. C. c. 22, s. 170.

Award to be made within a certain period.

**218.** The Arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order

referring the award back, shall make his award under his hand, and (unless such document or order respectively contains a different limit of time) within three months after he has been appointed, and has entered on the reference or has been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the time for making the award. C. S. U. C. c. 22, s. 171.

**219.** The Court of which such submission, document or order is made a rule or order, or any Judge thereof, may, for good cause to be stated in the rule or order for enlargement, from time to time, enlarge the term for making the award, and if no other period of enlargement is stated in the consent or order for enlargement, it shall be deemed an enlargement for one month. C. S. U. C. c. 22, s. 172.

Period may be enlarged.

**220.** In case an Umpire has been appointed, and in case the Arbitrators have allowed their time to expire without making an award, or have delivered to either party or to the Umpire a notice in writing stating that they cannot agree, the Umpire may enter on the reference in lieu of the Arbitrators. C. S. U. C. c. 22, s. 173.

When the umpire shall act.

**221.** Where any award made on any such submission, document or order of reference as aforesaid, directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party either forthwith or at any future time, or that any such party is entitled to the possession of such lands or tenements, the Court of which the document authorizing the reference is made a rule or order, may order any party to the reference who is in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the lands to the party entitled thereto pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue and possession shall be delivered by the Sheriff as on a judgment in ejectment. C. S. U. C. c. 22, s. 174.

When the award directs possession of real property to be delivered, the Court may order such delivery and enforce it as a judgment in ejectment.

**222.** In case of any such reference by rule, order or submission, as aforesaid, any party thereto may, without leave or order, obtain and issue from and out of the Court by which such rule or order was made, or the Court mentioned in such agreement, or if no such Court is mentioned in the submission and there is no restriction of the jurisdiction as aforesaid, then from and out of any one of the said Superior Courts, a subpoena, commanding the attendance and examination of any witness, and also the production of any document to and before the Referee, Arbitrator, Arbitrators or Umpire, and at the time and place mentioned in such subpoena. 36 V. c. 12, s. 1.

Issue of subpoenas to witnesses to attend before arbitrators.



Neglect to attend to be a contempt of Court.

**223.** If, in addition to the service of such subpœna, an appointment of the time and place of attendance in obedience thereto, signed by the Referee or one at least of the Arbitrators, or by the Umpire, before whom the attendance is required, is served, either together with or after the service of such subpœna, the disobedience of any such subpœna, shall be deemed a contempt of Court, but the person whose attendance is required shall be entitled to the like conduct money, and payment of expenses, and for loss of time, as for and upon attendance at any trial; and no person shall be compelled to produce, under any such subpœna, any writing or other document that he would not be compelled to produce at a trial, or to attend for more than two consecutive days, to be named in such subpœna. C.S. U. C. c. 22, s. 181; 36 V. c. 12, s. 2; 40 V. c. 7, *Sched. B.*

Witnesses may be sworn.

**224.** The witnesses upon any such reference shall, unless the parties otherwise agree or consent, be examined upon oath, and the Referee, Arbitrator or Umpire, or any one Arbitrator, shall administer an oath to such witnesses, or take their affirmations in cases where an affirmation is allowed by law instead of an oath. 36 V. c. 12, s. 3.

Commissions to examine witnesses.

**225.** In case any party to any such reference by rule, order or submission as aforesaid, is desirous of having and submitting therein to and before the Referee, Arbitrator, Arbitrators or Umpire, the testimony of any aged or infirm person resident within Ontario, or of any person who is about to withdraw therefrom, or who is residing without the limits thereof, the Court by which such rule or order was made, or a Judge thereof, or the Court mentioned in such submission or agreement, or a Judge thereof, or if no such Court is mentioned in the submission or agreement, then any one of the said Superior Courts, or any Judge thereof, may upon the motion of such party, and upon hearing the other parties to such reference, order the issue of a commission or commissions under the seal of the said proper Court in that behalf, to a Commissioner or Commissioners, to take the examination of such person or persons respectively. 36 V. c. 12, s. 4.

Notice of commission to be given.

**226.** Due notice of every such commission shall be given to the adverse party, to the end that he may cause the witnesses to be cross-examined. 36 V. c. 12, s. 5.

Return of commission.

**227.** In case the examination of any witness or witnesses taken without the limits of Ontario, pursuant to any such commission, is proved by an affidavit of the due taking of such examination, sworn before and certified by the Mayor or Chief Magistrate of the City or place where the same has been taken, and in case such commission, with such examination and affidavit thereto annexed, is returned to the Court from which such commission issued, close under the hand and seal of one or more of the Commissioners, the same shall *prima facie* be deemed to

have been duly taken, executed and returned, and shall be received as evidence in the matter of any such reference by and before the Referee, Arbitrator, Arbitrators or Umpire, unless it is made to appear to the Court to which such examination is returned, or to a Judge thereof, that the same was not duly taken, or unless it is made to appear to and before the said Referee, Arbitrator, Arbitrators or Umpire that the deponent is of sound mind, memory and understanding, and living within Ontario, at the time such examination is offered in evidence to and before such Referee, Arbitrator, Arbitrators or Umpire. 36 V. c. 12, s. 6.

#### PROCEEDINGS UPON DEATH OR MARRIAGE OF PARTIES.

**228.** The death of a plaintiff or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned. C. S. U. C. c. 22, s. 131.

Death of plaintiff or defendant.

**229.** In case there are two or more plaintiffs or defendants, and one or more of them dies, and if the cause of action survives to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated, but such death being suggested on the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants. C. S. U. C. c. 22, s. 132.

If there be more than one plaintiff or defendant, and the cause of action survives to the others.

**230.** In case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of such plaintiff may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion is made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased plaintiff, and such judgment shall follow upon the verdict, in favour of or against the person making such suggestion, as if such person had been originally the plaintiff. C. S. U. C. c. 22, s. 133.

Death of a sole plaintiff.

**231.** In case of the death of a sole defendant or sole surviving defendant where the action survives, the plaintiff may make a suggestion of the death, either in any of the pleadings, if the cause has not arrived at issue (or by filing a suggestion with the other pleadings, if it has so arrived), and that a person named in such suggestion is the executor or administrator of the deceased, and may thereupon serve such executor or administrator with a copy of the writ and suggestion, and of the said other pleadings, and with a notice signed by the plaintiff or his attorney, requiring such executor or administrator to appear within ten days after service of the notice, inclusive of the day of such service, and notifying him that in default of his so doing, the plaintiff may sign judgment against him as such executor or administrator. C. S. U. C. c. 22, s. 134.

Death of a sole defendant or of a sole surviving defendant may be suggested.

Copy and notice to be served on the opposite party.

After such notice, the proceedings to be the same as in actions relating to executors.

**232.** The same proceedings may be had and taken in case of non-appearance after such notice as upon a writ against such executor or administrator in respect of the cause for which such action has been brought. C. S. U. C. c. 22, s. 135.

If no previous pleadings, the suggestion to form part of the declaration.

**233.** In case there have been no pleadings before the death, the suggestion shall form part of the declaration, and the declaration, with a notice to plead and the suggestion, may be served together, and the new defendant shall plead to both at the same time, and within eight days after the service. C. S. U. C. c. 22, s. 136.

If plaintiff has declared and defendant has not pleaded.

**234.** In case the plaintiff had declared, but the defendant had not pleaded before the death, the new defendant shall plead at the same time to the declaration and suggestion within eight days after service of the suggestion; and in case the defendant had pleaded before the death, the new defendant shall, within eight days after the service of the suggestion, plead thereto only by way of denial, or such plea as may be appropriate to and rendered necessary by his character of executor or administrator, unless by leave of the Court or a Judge he is permitted to plead fresh matter in answer to the declaration. C. S. U. C. c. 22, s. 137.

If defendant has pleaded.

**235.** In case the defendant had pleaded before the death but the pleadings have not arrived at issue, the new defendant, besides pleading to the suggestion within eight days after the service thereof, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together; and in case the plaintiff recovers, he shall be entitled to the like judgment in respect of the debt or sum sought to be recovered, and in respect of the costs prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, as in an action originally commenced against the executor or administrator. C. S. U. C. c. 22, s. 138.

If plaintiff recovers.

The death of either party between verdict and judgment.

**236.** The death of either party between the verdict and judgment shall not be alleged for error, in case such judgment is entered within two Terms after the verdict. C. S. U. C. c. 22, s. 139.

Plaintiff's dying between interlocutory and final judgment.

**237.** If the plaintiff in any action dies after an interlocutory judgment and before a final judgment obtained therein, the action shall not abate by reason thereof, if such action might have been originally prosecuted or maintained by the executor or administrator of the plaintiff; and if the defendant dies after interlocutory judgment and before final judgment, the action shall not abate if such action might have been originally prosecuted or maintained against the executor or administrator of such defendant. C. S. U. C. c. 22, s. 140.

And if defendant so dies.

**238.** The plaintiff, or, if he dies after interlocutory judgment, his executor or administrator, shall have a writ of revivor in the words or to the effect of Form No. 13 in Schedule A to this Act, or to the like effect, against the defendant, if living after such interlocutory judgment, or if he has died, then against his executors or administrators, to show cause why damages in such action should not be assessed and recovered by the plaintiff, or by his executor or administrator. C. S. U. C. c. 22, s. 141.

A writ of revivor may issue in case of plaintiff's death.

**239.** If such defendant, his executor or administrator, appears at the return of such writ, and does not show or allege any matter sufficient to arrest the final judgment, or if he makes default, the damages shall be assessed, or the amount for which final judgment is to be signed shall be referred to the proper officer as in this Act provided; and after the assessment had, or the delivery of the order with the amount endorsed thereon to the plaintiff, his executor or administrator, final judgment shall be given for the plaintiff, his executor or administrator, against the defendant, his executor or administrator respectively. C. S. U. C. c. 22, s. 142.

Proceedings thereupon.

**240.** The marriage of a woman plaintiff or defendant shall not cause the action to abate, but the action may notwithstanding be proceeded with to judgment, and such judgment may be executed against the wife alone, or by suggestion or writ of revivor pursuant to this Act, judgment may be obtained against the husband and wife, if the case is one in which the husband is liable, and execution issued accordingly; and in case of a judgment for the wife, execution may be issued thereupon without any writ of revivor or suggestion; and if in any such action the wife has sued or defended by attorney appointed by her when sole, such attorney may continue the action or defence, unless his authority is countermanded, and the attorney changed according to the practice of the Court. C. S. U. C. c. 22, s. 143.

Marriage of a woman plaintiff or defendant.

**241.** Where an action would but for this Act have abated by reason of the death of either party, and in which the proceedings may be revived and continued under this Act, the defendant or person against whom the action may be so continued, may apply by summons to compel the plaintiff, or person entitled to proceed with the action, to proceed according to the provisions of this Act within such time as a Judge having jurisdiction in the case may order. C. S. U. C. c. 22, s. 144.

Right of defendant in action which would have abated but for this Act.

**242.** In default of such proceeding, the defendant or other person against whom the action might be so continued, may enter a suggestion of such default and of the representative character of the person by or against whom the action might be proceeded with, as the case may be, and shall have judgment for the costs of the action against the plaintiff, or against

When a suggestion of default may be made.



the person entitled to proceed in his room (as the case may be), and in the latter case, to be levied of the goods of the testator or intestate. C. S. U. C. c. 22, s. 145.

#### TOWN AND COUNTRY CAUSES.

Town causes  
and Country  
causes distin-  
guished.

**243.** In the Superior Courts, causes in which the venue is laid in the County of York shall be called Town causes, and all other causes shall be called Country causes. C. S. U. C. c. 22, s. 226.

#### NOTICE OF TRIAL OR OF ASSESSMENT OF DAMAGES, AND COUNTERMAND THEREOF, &c.

Eight days' notice of trial to be given.

**244.** Subject to the provisions of section fifty-eight, eight days' notice of trial or of assessment of damages (the first and last days being inclusive) shall be given in all cases, whether at Bar or at Nisi Prius, or at the County Courts. C. S. U. C. c. 23, s. 201; 34 V. c. 12, s. 12.

Four days' notice of countermand.

**245.** Unless otherwise ordered by the Court or a Judge, or by consent, a countermand of notice of trial or assessment shall, subject as aforesaid, be given four days (the first and last days being inclusive) before the time mentioned in the notice of trial or assessment, unless short notice has been given, and then two days, (both inclusive), before the time mentioned in the notice. C. S. U. C. c. 22, s. 202; 34 V. c. 12, s. 12.

Costs.

2. In any case where a countermand is served, if it is made to appear that costs have been necessarily incurred by the defendant in procuring the attendance of witnesses from a considerable distance, it shall be in the discretion of the Court or Judge to order the payment of such costs, or of any part thereof, by the plaintiff to the defendant, or to direct that the same shall be costs in the cause, or costs in the cause to the defendant. 40 V. c. 7, *Sched. A* (86).

If plaintiff neglects to go to trial within a certain time after issue joined,

**246.** In case issue is joined in any cause:—

1. In either of the Superior Courts, and the plaintiff neglects to bring such issue on to be tried at the times following, that is to say:—

in town causes.

(a.) In Town causes where issue has been joined in, or in the Vacation before Hilary, Trinity, or Michaelmas Term, if the plaintiff neglects to bring the issue on to be tried at or before the second Assizes following such Term, or, where issue has been joined in or in the Vacation before Easter Term, then if the plaintiff neglects to bring the issue on to be tried at or before the first Assizes after Easter Term, and

(b.) In Country causes where issue is joined in or in the Vacation before Hilary or Trinity Term, if the plaintiff neglects to bring the issue on to be tried at or before the second Assizes following such Term, or, where issue has been joined in or in the Vacation before Easter or Michaelmas Term, then if the plaintiff neglects to bring the issue on to be tried at or before the first Assizes after such Term ;

in country causes.

2. Or where issue has been joined in any cause in any County Court, if the plaintiff neglects to bring the issue on to be tried at the first Sittings of the Court after issue joined ;

in County Court causes,

3. Or, in either the Superior or County Courts, where a case has been brought down to trial, and has been made a remanet or a rule or order for a new trial has been granted, then if the plaintiff neglects to proceed to trial at the Assizes or Sittings next after the Assizes or Sittings at which the case has been made a remanet or next after the granting of the rule or order for a new trial,

in cases which have been made remanets.

then upon such neglect in any of the Courts respectively, and whether the plaintiff has in the meantime given notice of trial or not, the defendant may give twenty days' notice to the plaintiff to bring the issue on to be tried at the Assizes or Sittings of the County Court next after the expiration of the notice ; and if the plaintiff afterwards neglects to give notice of trial for such Assizes or Sittings, or to proceed to trial as required by the notice given by the defendant, the defendant may suggest on the record that the plaintiff has failed to proceed to trial, although duly required so to do (which suggestion shall not be traversable, but only be subject to be set aside if untrue), and the defendant may sign judgment for his costs ; but the Court or a Judge may extend the time for proceeding to trial with or without terms ; and no rule for trial by proviso shall hereafter be necessary. C. S. U. C. c. 22, s. 227 ; 40 V. c. 7, *Sched. A* (87).

defendant may give notice to plaintiff to bring issue to trial, &c.

#### NISI PRIUS RECORDS.

**217.** In the Superior Courts, the record of Nisi Prius need not be sealed, but shall be passed and signed by the Clerk or Deputy Clerk of the Crown in whose office the same is passed. C. S. U. C. c. 22, s. 203.

Nisi Prius records need not be sealed, but shall be passed.

**218.** The record of Nisi Prius shall be entered with the Clerk of Assize for trial at the then next ensuing Court of Assize for the County in which the venue is laid, at any time during the five days next before the commission day of the Assizes for the County, and on said commission day at any time before noon ; but the Judge may permit a record in any suit to be entered after the time above limited, if upon facts disclosed on affidavit, or on the consent of both parties, he sees fit to do so. 40 V. c. 7, *Sched. A* (88).

Entry of records for trial.

Endorsement  
on the record.

Clerk of  
Assize to  
make lists, &c.

**249.** The party entering any such record shall endorse thereon whether it is an assessment of damages, an undefended issue or a defended issue; and the Clerk of Assize shall make two lists, and enter each record in one of the said lists, in the order in which the records are received by him; and in the first list he shall enter all the assessments and undefended issues, and in the second list all defended issues, and the Judge at Nisi Prius may call on the causes in the first list at such time and times as he finds most convenient for disposing of the business. 23 V. c. 42, s. 2; 36 V. c. 9, s. 4.

Entering re-  
cords in  
County  
Courts.

**250.** In the County Courts, the plaintiff shall enter with the Clerk of the Court in which the case is to be tried a record in the form of a Nisi Prius record on or before the first day of the Sittings of the Court. 36 V. c. 9, s. 1.

Venire.

**251.** In the record in any cause or action, whether in either of the Superior Courts or in any County Court, whether the issues are to be tried or the damages to be assessed with or without the intervention of a jury, it shall not be necessary to enter or to use any other *venire* than the following, that is to say, "Therefore, &c." 36 V. c. 9, s. 2

#### TRIAL.

Certain ac-  
tions of torts  
to be tried by  
a jury:

**252.** In actions of libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution and false imprisonment, all questions which might heretofore have been tried by a jury, shall be tried by a jury, unless the parties in person or by their attorneys or counsel, waive such trial. 36 V. c. 8, s. 17.

Other issues to  
be tried and  
damage assess-  
ed by Judge  
alone.

**253.** All other issues of fact in any civil action, when brought in either of the Superior Courts, or in any of the County Courts, and the assessment or enquiry of damages in every such action, may, and (subject to the provisions of the two hundred and fifty-fifth section) in the absence of such notice as in subsection two of this section mentioned, shall be heard, tried and assessed by a Judge of the said Courts without the intervention of a jury;

Unless jury  
notice given  
or Court or  
Judge other-  
wise directs.

2. If any one or more of the parties desires such issue to be tried or damages to be assessed or enquired of by a jury, he shall give notice to the Court in which such action is pending, and to the opposite party, by filing with his last pleading and serving on the opposite party a notice in writing to the effect following, that is to say:

"The Plaintiff (*or one or more of them or the Defendant, or one or more of them, as the case may be*) requires that the issues in this cause be tried (*or the damages assessed*) by a jury,"

and a copy of such notice shall be attached to the record. 32 V. c. 6, s. 18 (1); 36 V. c. 8, s. 18.

**254.** Wherever any one or more of the parties to any such action have given such notice requiring a jury as hereinbefore provided, the cause shall be carried down to trial in the same manner and with the like effect as if section two hundred and fifty three had not been passed, and (subject to the provisions of section two hundred and fifty-five) the issues of fact therein shall be tried and determined or assessed by the unanimous verdict of twelve jurors duly sworn for the trial of such issues or for the assessment of such damages. Effect of notice requiring a jury.

2. The parties present at the trial may consent that the said notice shall be waived, and the case tried and damages assessed by the Judge, and may endorse a memorandum of such consent upon the record, and thereupon the Judge shall proceed to the trial of the issues or assessment of the damages without the intervention of a jury. 32 V. c. 6, s. 18 (3); C. S. U. C. 31, s. 2. Parties may waive notice

**255.** Notwithstanding anything in the two next preceding sections contained, the Judge presiding at the trial may in his discretion direct that any such action shall be tried or the damages assessed by a jury; And upon application to the Court in which the action is pending, or to a Judge thereof, by an order made before the trial, or by the direction of the Judge presiding at the trial, the issues may be tried and damages assessed without the intervention of a jury. 32 V. c. 6, s. 18 (3); 36 V. c. 8, s. 18. Judge may direct trial by jury, or without a jury.

**256.** The verdict or finding of the Judge by whom any issue is tried or damages assessed, shall have the like effect as the verdict or finding of a jury, and the like fees and charges shall be payable in respect of the same. 32 V. c. 6, s. 18 (2). Verdict of Judge to have like effect as verdict of jury.

**257.** Where in any action equitable issues are raised by the pleadings or defence, they shall be heard and tried, and the assessment or enquiry of damages, if any, incidental thereto, shall be assessed and enquired of by the Court or a Judge without the intervention of a jury; but it shall be competent for the Court or Judge, upon the application of either party, supported by sufficient reasons, to order such issues to be tried or damages assessed by a jury. 36 V. c. 8, s. 16. Equitable issues to be tried without a jury, except on order for a jury.

**258.** Where in any action or other proceeding at Law both legal and equitable issues are raised, such issues shall be tried at the same time unless the Court or a Judge thereof, or the Judge presiding at the trial, otherwise directs. 36 V. c. 8, s. 19. Legal and equitable issues to be tried at same time.

*Trials may be adjourned, &c.*

**259.** The Court or Judge at the trial of any cause may, when deemed right for the purposes of justice, order an adjourn- When the Court may



adjourn a trial.

ment for such time and subject to such terms and conditions, as to costs and otherwise, as it or he thinks fit. C. S. U. C. c. 22, s. 208.

### *Exclusion of Witnesses.*

Witnesses may be put out of Court.

**260.** The Judge at any trial shall at the request of either party cause the witnesses to be removed from the Court during such trial, and also the parties to the suit tendering themselves as witnesses, if in the discretion of the Judge it is deemed necessary; or he may instead require the party intending to give evidence for himself to be examined before his other witnesses; and any such witness who returns to the Court without leave, shall be liable to be punished in such manner as to the said Judge may seem proper; and the said Judge may in his discretion exclude the testimony of any witness who returns to the Court without leave of the Judge. 34 V. c. 12, s. 9.

### *Addresses of Counsel, &c.*

How addresses of counsel to jury regulated. may be reserved at trial.

**261.** Upon the trial of any cause, the addresses to the jury shall be regulated as follows:—the party who begins, or his counsel, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, shall be allowed to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall then be allowed to open his case, and also to sum up the evidence (if any), and the right to reply shall be the same as at present. C. S. U. C. c. 22, s. 209.

### *Decision or Verdict.*

Decision of questions of fact or law

**262.** Where upon the trial of any action at Nisi Prius, or in a County Court, any question of fact or of law arises for the determination of the presiding Judge, he may of his own motion or by consent of parties, reserve the giving of his final decision on the question so raised to a future day, and his decision whenever given shall be considered as if given at the time of the trial. 36 V. c. 8, s. 23.

Court may direct jury to give a special verdict, except for libel.

**263.** Upon any trial by a jury, where the Court or the presiding Judge otherwise directs, it shall not be lawful for such jury to give a general verdict, and it shall be the duty of such jury to give a special verdict if the Court or presiding Judge so directs; and unless the Court or the presiding Judge otherwise directs, the jury may give either a general or a special verdict; but this section shall not apply to actions of libel. C. S. U. C. c. 31, s. 2; 35 V. c. 8, s. 20.

**264.** Upon a trial by jury, in any case except an action for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution, and false imprisonment, the Judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by the Judge for the purpose; and in such case the jury shall answer such questions, and shall not give any verdict; and on the finding of the jury upon the questions which they answer, the Judge shall enter the verdict; and the verdict so entered, unless moved against, shall stand and be effectual as if the same had been the verdict of the jury. 37 V. c. 7, s. 32.

In certain cases the jury may be directed to answer questions, and on the answers the judge shall enter verdict.

**265.** In all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of a debt or damages. C. S. U. C. c. 22, s. 240.

Sum of money recovered to be awarded generally.

#### INTEREST ON VERDICTS.

**266.** Interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a jury to allow it. C. S. U. C. c. 43, s. 1.

Interest may be allowed where it has been usual.

**267.** On the trial of any issue, or any assessment of damages, upon any debt or sum certain, payable by virtue of a written instrument at a certain time, the jury may allow interest to the plaintiff from the time when such debt or sum became payable;

When allowed on debts certain and overdue.

2. If payable otherwise than by virtue of a written instrument at a certain time, the jury may allow interest from the time when a demand of payment is made in writing, informing the debtor that interest will be claimed from the date of such demand. C. S. U. C. c. 43, s. 2.

**268.** In actions of trover or trespass *de bonis asportatis*, the jury may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon. C. S. U. C. c. 43, s. 3.

When by way of damages in actions of tort.

**269.** In any suit or action in which any verdict is rendered for any debt or sum certain, on any account, debt, or promises, such verdict shall bear interest from the time of the rendering of such verdict, if judgment is afterwards entered in favour of the party or person who obtained such verdict, notwithstanding the entry of judgment upon such verdict has been suspended by the operation of any rule or order of Court made in such suit or action, and in all cases damages shall be assessed only up to the day of the verdict. 29-30 V. c. 42, s. 2.

Interest allowed from the rendering of the verdict in certain cases.

A to damages

## AMENDMENTS.

Amendments.

**270.** At any time during the progress of any action, suit or other proceeding, the Court or a Judge may, upon the application of any of the parties, or without any such application, make all such amendments as may seem necessary for the advancement of justice, the prevention and redress of fraud, the determining of the rights and interests of the respective parties and of the real question in controversy between them, and best calculated to secure the giving of judgment according to the very right and justice of the case.

2. Any such amendment may be made, whether the necessity for the same is or is not occasioned by the defect, error, act, default or neglect of the party applying to amend.

3. All such amendments shall be made upon such terms as to payment of costs and otherwise, as to the Court or Judge ordering the same to be made seem just. 36 V. c. 8, s. 50.

4. All such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made. C. S. U. C. 22, s. 222; 36 V. c. 8, s. 50.

On trial at Nisi Prius, order for amendment to be entered on the postea, rolls and records to be amended accordingly.

**271.** In case of an amendment made at the trial at Nisi Prius, the order for the amendment shall be endorsed on the record, and returned therewith; and thereupon such papers, rolls and other records of the Court from which such record issued, as it may be necessary to amend, shall be amended accordingly, and the order for amendment shall be entered on the roll or other document upon which the trial is had. C. S. U. C. c. 22, s. 219.

Party dissatisfied with the amendment may apply for new trial.

**272.** Any party dissatisfied with the decision of the Judge at Nisi Prius, respecting his allowance of any such amendment, may apply to the Court from which the record issued, for a new trial upon that ground; and in case such Court thinks the amendment improper, a new trial shall be granted accordingly, on such terms as the Court thinks fit, or the Court shall make such other order as to it seems meet. C. S. U. C. c. 22, s. 220.

In case of a variance instead of amendment, the Judge may direct the jury to find facts according to the evidence, and if variance be immaterial, Court may give judgment according to the merits.

**273.** In case of a variance at the trial, the Court or Judge, instead of causing the record to be amended as aforesaid, may direct the jury to find the fact or facts according to the evidence, and thereupon such finding shall be stated on the record; and notwithstanding the finding on the issue joined, if the Court in which the action is pending thinks the variance immaterial to the merits of the case, and the mis-statement such as could not have prejudiced the opposite party in the conduct of the action or defence, such Court shall give judgment according to the very right and justice of the case. C. S. U. C. c. 22, s. 221.

## COSTS OF THE DAY.

**274.** The Act of the Parliament of Great Britain, passed in the fourteenth year of the reign of King George the Second, entitled *An Act to prevent inconveniences from delays of causes after issue joined*, so far as the same relates to judgment as in case of a nonsuit, shall not be in force in Ontario. C. S. U. C. c. 22, s. 223.

The Imperial Act of 14 G. ii, c. 17, not to be in force in Ontario.

**275.** In case a notice of trial or assessment of damages is given and not duly countermanded, and in case the party who gave the notice of trial or assessment does not bring the issue to trial or assess the damages, such party shall for such default pay the costs of the day to the party to whom such notice was given. C. S. U. C. c. 22, s. 224.

Costs of the day provided for.

**276.** The rule for costs of the day for not proceeding to trial or assessment of damages pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit without motion made in Court. C. S. U. C. c. 22, s. 225.

Rule for costs of the day on affidavit.

## POSTEA.

**277.** After verdict or non-suit, the attorney of the party entitled to the *postea* in the cause shall prepare the same. C. S. U. C. c. 22, s. 230.

Attorney entitled to *postea* to prepare the same.

**278.** Where issues in fact have been tried, or damages have been assessed or enquired of before a Judge, without the intervention of a jury, the *postea* may be entered in the roll, in words or to the effect of Form 9 or Form 10 in Schedule A to this Act, according to the Court in which the action is brought and carried on; and it shall be sufficient in any *postea* to state that all or any of the issues (specifying them by their numbers or order) have been found in favour of the plaintiff or defendant, as the case may be. 36 V. c. 9, s. 3.

Postea.

## TRANSMISSION AND DELIVERY OF NISI PRIUS RECORDS, &amp;C.

**279** Every Deputy Clerk of the Crown shall, within twenty-four hours after notice in writing delivered to him in his office, for that purpose, and payment of the necessary postage, enclose, seal up and transmit by post to the proper principal office at Toronto, addressed to the Clerk thereof, any record of Nisi Prius in his custody mentioned in such notice, together with all exhibits filed at the trial, and in default thereof he may be adjudged guilty of a contempt of Court, and be dealt with in the discretion of the Court accordingly; and if, after such notice, the Nisi Prius record is not in Court at the time of moving any rule requiring a reference thereto, the party moving may, on filing an affidavit of the service of notice, and that the record, on search, has not been found in the said principal office,

On receiving notice, Deputy Clerks of the Crown to transmit Nisi Prius record to Toronto, sealed up, &c.

Failure to be a contempt.

After such notice, a party may move although the record be not in Court; first filing affidavit of notice.



be allowed by the Court to move such rule without the production of the record. C. S. U. C. c. 22, s. 228.

When and how Deputy Clerks shall deliver record or exhibits to attorney or parties.

**280.** The said Deputy Clerks of the Crown shall, after the time for the moving for new trials has expired, deliver to the attorney of the party entitled to the *postea*, any record in their custody upon getting a receipt for the same, but they shall not deliver to any party any exhibit filed, without a Judge's order to that effect. C. S. U. C. c. 22, s. 229.

#### MATTERS TO BE HEARD BY A SINGLE JUDGE.

Certain matters at law to be dealt with by a single Judge, subject to rehearing by the full Court.

**281.** All matters which according to the law or practice prevailing before the twenty-fourth day of March, 1874, had been heard, in the Court of Queen's Bench or Common Pleas, before the full Court in Term, or in the Practice Court, with the exception of motions for a new trial on account of some error on the part of the Judge before whom the trial was had, motions to enter or set aside a nonsuit, or any other matters being in the nature of an appeal from the decision, judgment or order of a single Judge, or such matters as the Judges of the said Courts may, by rule or order, appoint to be heard before the full Court, shall, unless a Judge otherwise directs, be heard and disposed of in the first instance by a single Judge sitting under the twentieth section of *The Act respecting the Courts of Queen's Bench and Common Pleas*.

Rev. Stat. c. 39, s. 20.

2. Every rule, order, or decision granted, made or pronounced by such single Judge, shall be subject to be reviewed and reheard by the full Court, and the full Court may for the purpose of such rehearing be composed of two Judges. 37 V. c. 7, ss. 17 & 20; 39 V. c. 7, *Sched. A*; 40 V. c. 8, s. 3.

Motions made to full Court which should have been made to a single Judge, and *vice versa*.

**282.** In case a motion or application is made to the full Court which should be made to a single Judge, or in case a motion or application is made to a single Judge which should be made to the full Court, such motion or application shall stand good, and the Court, or the Judge, as the case may be, shall, before or after the issue of a rule *nisi*, transfer the case, motion or application to the Judge or Court before or to whom the motion or application should have been made. 37 V. c. 7, s. 18.

#### MOTIONS FOR NEW TRIALS, OR TO ENTER A VERDICT OR NON-SUIT.

Verdicts, how considered by the Courts.

**283.** Every verdict shall be considered by the Court, in all motions affecting the same, as if leave had been reserved at the trial to move in any manner respecting the verdict, and in like manner as if the assent of parties had been expressly given for that purpose. 37 V. c. 7, s. 33.

Time for moving as to the trial.

**284.** Subject to the provisions of the two next succeeding sections, all motions respecting the trial or verdict shall be

made in the Superior Courts within the first four days, and in the County Courts within the first two days of the Term next following the trial. See C. S. U. C. c. 22, ss. 233, 238, & 242.

**285.** In case the decision of a question raised at the Assizes is reserved, and is not given until Term by the Judge reserving the same, all motions respecting the trial or verdict shall be made within ten days after the day on which the decision is given, if so many days expire in Term, and if not, then within the first four days of the ensuing Term; and until the time for moving as aforesaid has expired, judgment shall not be signed unless the Judge who tried the action certifies in the manner provided by the next section of this Act. 37 V. c. 7, s. 27.

When a reserved decision not given till Term.

**286.** In case of a trial during Term, all motions respecting the trial or verdict shall be made within six days after the day on which the verdict is rendered, if so many days expire in Term, and if not, then within the first four days of the ensuing Term; and until the time for moving as aforesaid has expired, judgment shall not be signed unless the Judge who tried the action certifies under his hand, on the back of the record, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification. 37 V. c. 7, s. 25, *last part*.

When trial had during Term.

**287.** Where issues of fact have been tried or damages assessed by a Judge without the intervention of a jury, the parties shall be entitled to move against the verdict or finding of the Judge by motion for non-suit, new trial or otherwise, within the same time, and on the same grounds (including objections against the sufficiency of the evidence, or the view taken thereof by the Judge, as allowed in cases of trial or assessment of damages by a jury. 32 V. c. 6, s. 18 (2).

Where trial by a Judge without a jury.

2. Wherever the verdict or finding of the Judge is moved against, it shall not be obligatory on the Court before which such motion is made to grant a new trial when the objections taken are objections against the sufficiency of the evidence or the view thereof or of the law of the case taken by the Judge; but the Court may pronounce the verdict which, in their judgment, the Judge who tried the cause ought to have pronounced, and may amend the *postea*, and enter the verdict accordingly. 33 V. c. 7, s. 6; 40 V. c. 7, *Sched. A* (89).

The Court, on motion against verdict, etc., may give a verdict.

**288.** In every rule *nisi* for a new trial or to enter a verdict or non-suit, the grounds upon which such rule has been granted shall be shortly stated therein; but in case of any omission the Court may permit the rule to be amended and served again on such terms as are deemed reasonable. C. S. U. C. c. 22, s. 231.

Grounds to be stated in rule nisi for new trial.

Court may allow amendments.

New trials.

**289.** A new trial shall not be granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court to which application is made, or of any Court of Appeal, some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appears to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only. 37 V. c. 7, s. 34; 40 V. c. 7, *Sched. A* (90).

On leave reserved for non-suit, etc., power of Court no motion.

**290.** In any case where on the trial leave is reserved to move to enter a non-suit, or to enter a verdict for the defendant, and the jury disagree and find no verdict, the Court, on motion pursuant to such leave, may give the same judgment as if a verdict had been found for the plaintiff. 34 V. c. 12, s. 10.

When costs to abide the event.

**291.** If a new trial is granted on the ground that the verdict is against evidence, the costs of the first trial shall abide the event, unless the Court otherwise orders. C. S. U. C. c. 22, s. 232.

*In the County Courts.*

County Courts may set aside non-suits or grant new trials.

**292.** In cases in the County Courts, verdicts or non-suits may be set aside and new trials granted, or judgments be arrested, upon the like grounds and principles as in the Superior Courts, but no motion for any such purpose shall be entertained after the rising of the Court on the second day of the Term ensuing the rendering of the verdict or the non-suit. C. S. U. C. c. 22, s. 233.

All rules in the County Court to be two-day rules.

**293.** All rules in the County Courts in Term shall be two-day rules (where the same rules in the Superior Courts would be four-day rules), and shall be answerable or returnable on the third day inclusive, after service, and may be made absolute at the rising of the Court on that day; and in all proceedings in Term not otherwise provided for, one-half of the period allowed in the Superior Courts when exceeding one day shall be allowed in the County Courts. C. S. U. C. c. 22, s. 343.

ARREST OF JUDGMENT, AND JUDGMENT *non obstante veredicto*.

Proceedings on motions in arrest of judgment or for judgment *non obstante*.

**294.** Upon any motion made in arrest of judgment or for judgment *non obstante veredicto* by reason of the non-averment of some material fact or facts, or of some material allegation or other cause, the party whose pleading is alleged or adjudged to be therein defective, may, by leave of the Court, suggest the existence of the omitted fact or facts, or other matter which, if true, would remedy the alleged defect; and such suggestion may be pleaded to by the opposite party within eight days after notice thereof, or such further time as the Court or a Judge may allow, and the proceedings for trial of any issues joined upon

Suggestion of facts by party whose pleading is objected to.

such pleadings shall be the same as in an ordinary action. C. S. U. C. c. 22, s. 234.

**295.** If the fact or facts suggested are admitted or are found to be true, the party who suggested them shall be entitled to such judgment as he would have been entitled to if such fact or facts or allegations had been originally stated in the pleading and proved or admitted on the trial, together with the costs of and occasioned by the suggestion and proceedings thereon; but if such fact or facts are found to be untrue, the opposite party shall be entitled to his costs of and occasioned by the suggestion and proceedings thereon, in addition to any other costs to which he may be entitled. C. S. U. C. c. 22 s. 235.

If suggestion  
be found true.

If untrue.

#### CONFESSIONS, FILING THE SAME AND JUDGMENTS THEREON.

**296.** Final judgment upon a *cognovit actionem* or warrant of attorney to confess judgment given or executed before the suing out of any process, may, at the option of the plaintiff, be entered in any office of either of the Superior Courts, and in like manner and like circumstances final judgment may be entered on a *cognovit actionem* or warrant of attorney to confess judgment for an amount not exceeding four hundred dollars, in any County Court, unless some particular office or some particular County Court for that purpose is expressly stated in the *cognovit* or warrant. C. S. U. C. c. 22, s. 236.

As to judgment on *cognovits*.

**297.** No confession of judgment or *cognovit actionem* shall be valid or effectual to support any judgment or writ of execution, unless, within one month after the same has been given, the same, or a sworn copy thereof, is filed of record in the proper office of the Court in the County in which the person giving such confession of judgment or *cognovit actionem* resides; and a book shall be kept in every such office, to be called the *Cognovit Book*, in which shall be entered the names of the plaintiff and defendant in every such confession or *cognovit*, the amount of the true debt or arrangement secured thereby, the time when judgment may be entered and execution issued thereon, and the day when such confession or *cognovit*, or copy thereof, is filed in the said office; and such book shall be open to inspection by any person during office hours, on the payment of a fee of twenty cents. C. S. U. C. c. 22, s. 237.

Confessions and *cognovits* to be registered.

#### JUDGMENT AND WRITS OF EXECUTION.

**298.** The party in whose favour a verdict has been rendered, or when the plaintiff has been non-suited at the trial, the defendant may, in the Superior Courts, enter final judgment on the fifth day, and in the County Courts on the third day of the Term next following such verdict or non-suit, and thereupon sue out execution. C. S. U. C. c. 22, s. 238.

When final judgment may be entered.



After verdict  
or non-suit,  
Judge may  
certify that  
execution  
ought to issue  
forthwith.

**299.** In case the plaintiff in any action or suit becomes non-suited, or a verdict is given or damages are assessed for the plaintiff or defendant, the Judge before whom any issue joined in any such action is tried, or before whom damages are assessed, may certify under his hand on the back of the record, at any time before the end of the Sittings or Assizes, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification; and in case of a verdict or damages assessed for the plaintiff, then either for the whole or any part of the sum found by such verdict or assessment, in all which cases costs may be taxed in the usual manner, and judgment may be entered and execution issued forthwith or afterwards on any day in Vacation or Term, according to the terms of such certificate, and the *postea*, with such certificate as a part thereof, shall be entered of record as of the day on which the judgment is signed: but the party entitled to such judgment may postpone the signing thereof. C. S. U. C. c. 22, s. 239.

Taxing costs.

Execution.

Entering  
*postea*.

Entry and re-  
cord of judg-  
ment.

**300.** Every judgment signed by virtue of the next preceding section may be entered and recorded as the judgment of the Court wherein the action is pending, though the Court may not be sitting on the day of the signing thereof, and shall be as effectual as if the same had been signed and recorded according to the course of the Common Law. C. S. U. C. c. 22, s. 241.

Judgment may  
be set aside,  
&c.

**301.** Notwithstanding any judgment signed or recorded or execution issued by virtue of the two next preceding sections, the Court in which the action is brought may order such judgment to be vacated and execution to be stayed or set aside, and may enter an arrest of judgment or grant a new trial or a new assessment of damages, as justice may appear to require, and thereupon the party affected by such writ of execution shall be restored to all that he may have lost thereby, in like manner as upon the reversal of a judgment for error, or otherwise as the Court may think fit to direct; but any application to vacate such judgment must be made within the times limited in the two hundred and eighty-fourth to two hundred and eighty-sixth sections. C. S. U. C. c. 22, s. 242.

Consequence  
of it being so.

Deputy Clerk  
to keep books  
for minuting  
all judgments,  
&c.

**302.** Every Deputy Clerk of the Crown and Pleas and every County Court Clerk shall keep a regular book, in which shall be minuted and docketed all judgments entered by such Deputy Clerk or County Court Clerk, and such minute shall contain:

1. The name of every plaintiff and defendant;
2. The date of the issue of the first process;
3. The date of the entry of judgment:

4. The form of action, and the amount recovered, exclusive of costs;

5. The amount of costs taxed; and

6. Whether such judgment has been entered on verdict, default, confession, *non pros*, non-suit, discontinuance, or how otherwise. C. S. U. C. c. 22, s. 243.

**303.** Within three months after the entry of each judgment, by a Deputy Clerk of the Crown, he shall transmit to the principal Clerk of the proper Court in Toronto, every such judgment-roll and all papers of or belonging thereto, and such judgment shall be also docketed in the principal office; and in case in any of the Courts the original judgment-roll happens to be lost or destroyed, so that no exemplification or examined copy thereof can be procured, a copy of the entry in any of such docket books, certified by the Clerk or Deputy Clerk of the Crown, or by the Clerk of the County Court having such book in his custody, shall be evidence of all matters therein set forth and expressed. C. S. U. C. c. 22, s. 244.

Judgments to be also docketed at Toronto.

If the original roll be lost, copies of entries may be used as evidence.

#### EXAMINATION OF DEBTORS—ATTACHMENT OF DEBTS—PROCEEDINGS AGAINST GARNISHEES.

**304.** In case any party, whether plaintiff or defendant, has obtained a judgment in either of the Superior Courts, whatever be the cause of action for which the same was recovered, such party, or any person entitled to enforce such a judgment, may apply to such Court or to any Judge having authority to dispose of matters arising in such Court, for a rule or order that the judgment debtor shall be orally examined upon oath before the Clerk or any Deputy Clerk of the Crown, or before the Judge or Clerk of the County Court within the jurisdiction of which such debtor resides, or before any other person to be specially named in such rule or order, touching his estate and effects, and as to the property and means he had when the debt or liability which was the subject of the action in which judgment has been obtained against him was incurred, and as to the property and means he still has of discharging the said judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him, and the Court or Judge may make such rule or order for the examination of the judgment debtor, and for the production of any books or documents. C. S. U. C. c. 22, s. 287; C. S. U. C. c. 24, s. 41; 27-8 V. 25, s. 1. See also *Rev. Stat. c. 49, s. 17.*

Judgment creditor may apply to have his judgment debtor examined as to his property, &c.

**305.** In case such debtor does not attend as required by the said rule or order, and does not allege a sufficient excuse for not attending, or if attending, he refuses to disclose his property or his transactions respecting the same, or

Committal of debtor for non-attendance, refused to answer.

ing unsatisfac-  
torily, &c.

does not make satisfactory answers respecting the same, or if it appears from such examination that such debtor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, such Court or Judge may order such debtor to be committed to the Common Gaol of the County in which he resides for any term not exceeding twelve months, or such Court or Judge may, by rule or order, direct that a writ of *capias ad satisfaciendum* may be issued against such debtor, and a writ of *capias ad satisfaciendum* may thereupon be issued upon such judgment, or in case such debtor is at large upon bail, such Court or Judge may make a rule or order for such debtor's being committed to close custody; and in such case the Sheriff on due notice of such rule or order shall forthwith take such debtor and commit him to close custody until he obtains a rule of Court or Judge's order for again allowing him to go out of close custody on giving the necessary bond in that behalf or until he is otherwise discharged by due course of law. C. S. U. C. c. 24, ss. 41 & 35; 27-8 V. c. 25, s. 1.

Mode of con-  
ducting exami-  
nation.

**306.** The examination shall be conducted in the same manner, as in case of an oral examination of an opposite party; and in the case of a judgment in any County Court, such County Court or the Judge or acting Judge thereof may exercise similar jurisdiction in relation to such judgment, and in like manner as might be exercised by one of the Superior Courts sitting in Banc. C. S. U. C. c. 22, s. 287.

Judge may on  
application  
and affidavit,  
order attach-  
ment of such  
debts.

**307.** Subject to the provisions of section three hundred and eighteen, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon his affidavit or that of his attorney, stating that judgment has been recovered and that it is still unsatisfied, and to what amount, and that some third person is indebted to the judgment debtor and is within the jurisdiction, a Judge of any of the Superior or County Courts (as the case may be) may order that all debts owing by or accruing from such third person to the judgment debtor shall be attached to answer the judgment. C. S. U. C. c. 22, s. 288.

And may order  
the garnishee  
to appear, &c.

**308.** Such third person is hereinafter called the garnishee, and service upon him of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the Judge directs, shall bind such debts in his hands; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge or some officer of the Court to be specially named by such Judge, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt, and in cases in the Superior Courts such order and the order mentioned in sections three hundred and four and three hundred and seven may be made by the Judge of the County Court of

the County in which the judgment has been recovered—except in the County of York : but the four last preceding sections and this section shall not apply in actions commenced or carried on against a defendant as an absconding debtor. C. S. U. C. c. 22, s. 289 ; 40 V. c. 7, *Sched. A.* (91).

**309.** If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment debt. C. S. U. C. c. 22, s. 290.

When prompt execution may issue against garnishee.

**310.** If the garnishee disputes his liability, the Judge, instead of making an order that execution shall issue, may order that the judgment creditor may proceed against the garnishee, by writ calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit, and the proceedings upon such suit shall be the same, or as nearly as may be the same, as upon a writ of revivor issued under this Act. C. S. U. C. c. 22, s. 291.

If garnishee disputes his liability.

**311.** In cases in the Superior Courts, where the amount claimed as due from any garnishee is within the jurisdiction of a County or Division Court, the order to appear made under the three hundred and eighth section shall be for the garnishee to appear before the Judge of the County Court of the County within which the garnishee resides, at some day and place within his County to be appointed in writing by such Judge ; and written notice thereof shall be given to the garnishee at the time of the service of the order. C. S. U. C. c. 22, s. 292.

When garnishee to appear before County Court Judge in cases in Superior Courts.

**312.** If the garnishee does not forthwith pay the amount due by him, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear before the Judge named in the order at the day and place appointed by such Judge, then such Judge, on proof of service of the order and appointment having been made four days previous, may make an order directing execution to issue out of the County Court or out of a Division Court, according to the amount due, and such order shall, without any previous writ or process, be sufficient authority for the Clerk of either of such Courts to issue execution for levying the amount due from such garnishee. C. S. U. C. c. 22, s. 293.

Execution from County or Division Court, if the garnishee does not dispute the debt.

**313.** If the garnishee suggests that the debt sought to be attached belongs to some third person, or that some third per-

Proceedings where garnishee suggests



a lien of a  
third person.

son has a lien or charge upon it, the Judge may order such third person to appear before him, or before some person to be specially named by him, and state upon oath the nature and particulars of his claim upon such debt.

2. After hearing the evidence of such third person, and of any other person or persons whose evidence the Judge may, by the same or any subsequent order, think fit to require, or in case such third person does not appear, the Judge may bar the claim of such third person, or make such other order for the determination of the matter in dispute, either by the trial of an issue or otherwise, as he thinks fit, upon such terms in all cases, with respect to the lien or charge (if any) of such third person, and as to costs, as he thinks just and reasonable. 40 V. c. 8, s. 18.

The Sheriff or  
Bailiff to levy  
the amount  
with costs and  
fees.

**314.** The Sheriff or Bailiff to whom such writ of execution is directed, shall levy the amount mentioned in the said execution, towards satisfaction of the judgment debt, together with the costs of the proceeding, to be taxed, and his own lawful fees, according to the practice of the Court from which such execution has issued. C. S. U. C. c. 22, s. 294.

Proceedings if  
he disputes the  
debt.

**315.** If the garnishee disputes his liability, then such Judge of the County Court may order that the judgment creditor shall be at liberty to proceed against the garnishee according to the usual practice of the County or Division Court, as the case may require, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. C. S. U. C. c. 22, s. 295.

Proceedings in  
County Courts  
when amount  
within the ju-  
risdiction of  
Division  
Courts.

**316.** In cases in the County Courts when the amount claimed as due from any garnishee is within the jurisdiction of a Division Court, the order to be made under the three hundred and eighth section, shall be for the garnishee to appear before the Clerk of the Division Court within whose Division the garnishee resides, at his office, at some day to be appointed in the said order by the Judge of the County Court; and the said order shall be served on such garnishee, and if the garnishee does not forthwith pay the amount due by him or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear before the Division Court Clerk named in the order at his office at the day appointed by such Judge, then such Judge, on proof of the service of the order having been made four days previous, may make an order directing execution to issue out of the Division Court of the Division in which such garnishee resides, according to the amount due, and such order shall, without any previous summons or process, be sufficient authority for the Clerk of the said Division Court to issue execution to levy the amount due from such garnishee, and the Bailiff to whom such writ of execution is directed shall be thereby authorized to levy and shall levy the amount men-

tioned in the said execution towards satisfaction of the judgment debt, together with the costs of the proceeding to be taxed, and his own lawful fees; but if the garnishee disputes his liability, then such Judge may order that the judgment creditor in the said County Court shall be at liberty to proceed against the garnishee, according to the practice of the said Division Courts, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. C. S. U. C. c. 22, s. 296.

**317.** Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although the proceeding should be afterwards set aside or the judgment be reversed. C. S. U. C. c. 22, s. 297.

Payment by garnishee to be a valid discharge.

**318.** No debt due or accruing to a mechanic, workman, labourer, servant, clerk or employee, for or in respect of his wages or salary, shall be liable to seizure or attachment, under the provisions of this or any other Act relating to the attachment or garnishment of debts, unless such debt exceeds the sum of twenty-five dollars and then only to the extent of such excess. 37 V. c. 13, s. 1.

Debts due to mechanics, &c., for wages, not to be attached, except to excess over \$25.

**319.** Nothing in the preceding section contained shall affect or impair the right or remedies of any creditor whose debt has been contracted before the first day of October, 1874. 37 V. c. 13, s. 2

Saving clause as to debts created before 1st Oct., 1874.

**320.** There shall be kept at the several offices of the Clerks of the Crown and Deputy Clerks, and at theseveral County Court offices, a Debt Attachment Book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amount recovered and otherwise; and the mode of keeping such books shall be the same in all the offices, and copies of any entries made therein may be taken by any person upon application to the proper officer. C. S. U. C. c. 22, s. 298.

Attachment books to be kept in the offices of the Clerks of the Crown and Deputies.

**321.** The costs of any application for an attachment of debts under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or Judge. C. S. U. C. c. 22, s. 299.

Costs of such application.

#### THE REVIVAL OF JUDGMENTS AND OTHER PROCEEDINGS BY AND AGAINST PERSONS NOT PARTIES TO THE RECORD.

**322.** During the lives of the parties to a judgment, or of any of them, execution may be issued at any time within six years from the recovery of the judgment, without a revival thereof by *scire facias*, or writ of revivor. C. S. U. C. c. 22, s. 301.

Execution without *scire facias* or revival.

Application  
for revival of  
judgment and  
execution  
thereupon.

**323.** In case it becomes necessary to revive a judgment, either by reason of lapse of time or of a change by death or otherwise of the parties entitled, or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned, or apply to the Court or a Judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the Court that such party is entitled to have execution of the judgment, and to issue execution thereupon. C. S. U. C. c. 22, s. 302.

Such applica-  
tion to be by  
summons or  
rule to show  
cause.

**324.** Such leave shall be granted by the Court upon a rule to show cause, or by a Judge upon a summons to be served according to the practice of the Court, or in such other manner as the Court or Judge directs, and the rule or summons may be in the words or to the effect of Form No. 11, in Schedule A to this Act. C. S. U. C. c. 22, s. 303.

If the Court  
is satisfied.

**325.** In case it manifestly appears upon such application that the party making the same is entitled to execution, the Court or Judge shall allow such suggestion as aforesaid to be entered in the words or to the effect of Form No. 12, in Schedule A to this Act, or to the like effect, and execution to issue thereupon, and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the Court or Judge shall discharge the rule or dismiss the summons with or without costs; but in the last mentioned case, the party making the application shall be at liberty to proceed by writ of revivor or action upon the judgment. C. S. U. C. c. 22, s. 304.

And if not.

Writ of revi-  
vor and pro-  
ceedings there-  
on.

**326.** The writ of revivor shall be directed to the party called upon to show cause why execution should not be awarded, and shall bear teste on the day it is issued, and after reciting the reason why such writ has become necessary, it shall call upon the party to whom it is directed, to appear within ten days after service thereof in the Court out of which it issues, to show cause why the party at whose instance it is so issued should not have execution against the party to whom such writ is directed, and it shall give notice that in default of appearance, the party who issues such writ may proceed to execution. C. S. U. C. c. 22, s. 305.

Form of writ.

**327.** Such writ may be in the words or to the effect of Form No. 13, in Schedule A to this Act, and may be sued out and served in any County, and otherwise proceeded upon, whether in Term or Vacation, in the same manner as a writ of summons. C. S. U. C. c. 22, s. 306.

Venue in such  
cases.

**328.** The venue in a declaration upon such writ may be laid in the County in which the writ has been sued out; and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action. C. S. U. C. c. 22, s. 307.

**329.** Notice in writing to the plaintiff, his attorney or agent, shall be sufficient appearance to a writ of revivor. C. S. U. C. c. 22, s. 308. Notice to be a sufficient appearance.

**330.** A writ of revivor to revive a judgment less than ten years old, shall be allowed without any rule or order; but if more than ten years old, then not without a rule of Court or Judge's order; and if more than fifteen years old, not without a rule to show cause. C. S. U. C. c. 22, s. 309. Age of judgment as respects writs of revivor.

**331.** Proceedings against executors upon a judgment of assets *in futuro* may be had and taken in the matter herein provided as to writs of revivor. C. S. U. C. c. 22, s. 310. Proceedings against executors as to assets *in futuro*.

**332.** All writs of *scire facias* against bail on a recognizance or against members of a joint stock company or other body, or upon a judgment recorded against a public officer or other person sued as representing such company or body, or against such company or body itself, and all such writs by or against a husband to have execution of a judgment for or against a wife, or for restitution after a reversal on error or appeal, or upon a suggestion of further breaches after judgment, or for any penal sum pursuant to the Imperial Act passed in the Session holden in the eighth and ninth years of the reign of King William the Third, entitled "*An Act for the better preventing frivolous and vexatious suits*"—shall be tested, directed and proceeded upon in like manner as writs of revivor. C. S. U. C. c. 22, s. 311. Certain writs of *scire facias* to be proceeded upon in like manner as writs of revivor.  
8-9 W. iii, c. 11.

**333.** In case of the death of any one or more of the defendants in any action, against whom a joint judgment has been entered in any Court of Record, the plaintiff or plaintiffs, or the survivor or survivors of them, or the executor or administrator of a sole plaintiff or of the survivor, may proceed by writ of revivor against the representatives of such defendant or defendants, or by an application to the Court or a Judge as hereinbefore provided, notwithstanding there may be another defendant still living, and against whom the judgment may be in force; but the property and effects of stockholders in chartered banks, or the members of other incorporated companies, shall not be liable to a greater extent than they would have been if this section had not been passed. C. S. U. C. c. 22, s. 312. Proceedings by writ of revivor against the representatives of deceased joint contractors authorized.  
Limitation of liability of stockholders in chartered banks or incorporated companies.

#### PROVISIONS WITH RESPECT TO COSTS.

**334.** Until otherwise ordered, under the provisions of this Act, the costs of writs issued and of all other proceedings under the authority of this Act, shall be and remain the same as at present established. C. S. U. C. c. 22, s. 314. Costs on writs under this Act to be as heretofore until otherwise ordered.

**335.** No mileage shall be taxed or allowed for the service of any writ, paper or proceeding, without an affidavit being made and produced to the proper Taxing Officer, stating the sum Mileage.



When mileage  
not allowed on  
service of  
*mesne* process  
unless served  
by Sheriff.

actually disbursed and paid for such mileage, and the name of the party to whom such payment has been made; and, except in the cases provided for in the twenty-third section of this Act, no fees shall be allowed for the mileage or service of writs of summons or other *mesne* process unless served, and sworn in the affidavit of service to have been served, by the Sheriff, his Deputy or Bailiff, being a literate person (or by a Coroner when the Sheriff is a party to the suit), nor unless a return of the Sheriff or Coroner (as the case may be) is endorsed thereon. C. S. U. C. c. 22, ss. 19, 315, 277.

Costs of issue  
to follow its  
result.

**336.** The costs of any issue, either of fact or of law, shall follow the finding or judgment on such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues, unless the Judge at the trial certifies to the contrary. 34 V. c. 12, s. 2.

Party allowed  
costs after  
judgment on  
demurrer, &c.

**337.** In case judgment is given either for or against a plaintiff, or for or against a defendant, upon any demurrer joined in any action whatever, the party in whose favour the judgment is given shall also have judgment to recover his costs in that behalf. C. S. U. C. c. 22, s. 316.

Defendants  
entitled to  
costs after a  
*nolle prosequi*,  
unless the  
Judge certifies.

**338.** In case several persons are made defendants in any personal action, and a *nolle prosequi* is entered as to any one or more of them, or in case, upon the trial of such action, a verdict passes for him or them, every such person shall have judgment for and may recover his reasonable costs, unless, in the case of a trial, the Judge before whom the trial is had, certifies upon the record, under his hand, that there was a reasonable cause for making such person a defendant in the action. C. S. U. C. c. 22, s. 317.

Costs where  
*nolle prosequi*  
entered as to  
part of declara-  
tion.

**339.** Where a *nolle prosequi* is entered upon any count, or as to part of any declaration, the defendant shall have judgment for his reasonable costs in that behalf. C. S. U. C. c. 22, s. 318.

Costs on arrest  
of judgment or

**340.** Upon an arrest of judgment or judgment *non obstante veredicto*, the Court shall adjudge to the party against whom such judgment is given, the costs occasioned by the trial of any issues in fact arising out of the pleading for defect of which such judgment is given, and upon which such party has succeeded; and such costs shall be set off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any. C. S. U. C. c. 22, s. 319.

judgment *non  
obstante*.

Plaintiff allowed  
costs on  
*scire facias*  
after judgment  
by default, &c.

**341.** In all writs of *scire facias*, and of revivor, the plaintiff, obtaining judgment on an award of execution, shall recover his costs of suit upon a judgment by default, as well as upon a judgment after plea pleaded, or demurrer joined. C. S. U. C. c. 22, s. 320.

**342.** In every action brought by an executor or administrator in right of the testator or intestate, such executor or administrator, in case of being non-suited, or of a verdict passing against him, and in all other cases in which he would be liable if he were suing in his own right upon a cause of action accruing to himself, shall, unless the Court in which the action is brought, or a Judge thereof, otherwise orders, be liable to pay costs to the defendant, and the defendant shall have judgment for such costs, and they shall be recovered in like manner. C. S. U. C. c. 22, s. 321.

Payment of costs by executors and administrators.

**343.** In case the plaintiff in any action does not obtain a verdict for the amount for which the defendant has been arrested and held to special bail, and in case upon motion made in Court for that purpose, and upon hearing the parties by affidavit, it is made to appear, to the satisfaction of the Court in which the action has been brought, that the plaintiff had not any reasonable or probable cause for causing the defendant to be arrested and held to special bail in such amount as aforesaid, such Court may, by rule or order, direct that the costs of suit shall be allowed to the defendant, and the defendant shall thereupon be entitled to such costs of suit, and the plaintiff, upon such rule or order being made, shall be disabled from taking out any execution for the sum recovered in such action, unless the same exceeds, and then in such sum only as the same exceeds the amount of the taxed costs of the defendant, and in case the sum recovered in any such action is less than the amount of the taxed costs of the defendant, then after deducting the sum of money recovered by the plaintiff from the amount of the defendant's costs to be taxed as aforesaid, he may take out execution for the balance of such costs, in like manner as a defendant may now by law have execution for costs in other cases. C. S. U. C. c. 22, s. 322.

Circumstances under which defendant, when held to special bail, may be entitled to costs of suit.

**344.** In case of an action brought upon any judgment recovered in any Court of Record, or in any Division Court, the plaintiff in such action shall not be entitled to any costs of suit, unless the Court in which the action is brought, or some Judge of the same Court, otherwise orders. C. S. U. C. c. 22, s. 323; C. U. S. C. c. 19, s. 115.

In actions on judgments, plaintiff not entitled to costs unless by rule of Court.

**345.** If the plaintiff in any action of trespass, or trespass on the case, recovers by the verdict of a jury less damages than eight dollars, such plaintiff shall not be entitled to recover, in respect of such verdict, any costs whatever, whether the verdict has been given on an issue tried, or judgment has passed by default, unless the Judge or presiding officer before whom such verdict is obtained, immediately afterwards, or at any future time to which he may postpone the consideration of the matter, certifies on the back of the record in the form hereinafter prescribed, to entitle the plaintiff to full costs; and in case such certificate is not granted then the defendant in such action shall be entitled

In trespass on case, plaintiff to recover no costs if verdict be less than \$8, unless Judge certifies certain facts.

If Judge does not certify, defendant to set

off his costs, unless Judge certifies that he is not entitled.

to set off his costs against such verdict and recover judgment and issue execution against the plaintiff for the balance of such costs as between attorney and client, unless the said Judge or presiding officer certifies as hereinafter provided upon the record, in manner aforesaid, that the defendant is not entitled to recover his costs in the cause against the plaintiff. 31 V. c. 24, s. 1.

This shall not extend to certain trespasses.

**346.** Nothing in the last section contained shall deprive the plaintiff of costs in any action brought for a trespass over any land, waste, close, wood, plantation or inclosure, or for entering into any dwelling, out-building or premises in respect to which notice not to trespass had been previously served by or on behalf of the owner or occupier of the land trespassed over, or upon, or left at the last reputed or known place of abode of the defendant in such action; but nothing in this or in the last preceding section shall entitle any plaintiff to recover costs as of an action brought in a Superior Court in any case where by law his action might properly have been brought in an Inferior Court. C. S. U. C. c. 22, s. 325.

Provision as to actions which might have been brought in an Inferior Court.

In Inferior Court actions brought in Superior Courts.

**347.** In case a suit of the proper competence of a County Court is brought in either of the Superior Courts of Common Law, or in case a suit of the proper competence of a Division Court is brought in either of such Superior Courts, or in a County Court, the costs shall be taxed in the manner hereinafter mentioned. 31 V. c. 24, s. 2 (1).

If Judge certifies certain facts, plaintiff to recover full costs.

1. In case the Judge who presides at the trial of the cause, certifies in open Court, immediately after the verdict has been rendered, or at any future time to which he may then postpone the consideration of granting or refusing the certificate, that it is a fit cause to be withdrawn from the County Court or Division Court, as the case may be, and brought in the Superior Court or a County Court, as the case may be, the plaintiff shall recover his costs of suit according to the practice of the Court in which the action is brought, in like manner and subject to the like deduction or set off for costs of issues upon which the defendant has succeeded, as he would have done and would have been subject to in case his suit had been of the proper competence of the Court in which the action is brought. 31 V. c. 24, s. 2 (2).

If Judge certifies certain facts, plaintiff to recover costs of Court in which action should have been brought.

2. In case the Judge who presides at the trial of the cause certifies at the time aforesaid that the plaintiff had reasonable ground for believing he had the right of withdrawing his cause from the County Court or Division Court, as the case may be, and bringing it in the Superior Court or a County Court, as the case may be, and that the defendant, without just reason, defended the same, the plaintiff shall recover his costs of suit according to the practice of the Court in which the action should have been brought, in like manner, and subject to the like de-

duction or set-off for costs of issues upon which the defendant has succeeded, as he would have done, and would have been subject to in case he had brought his action in such Inferior Court. 31 V. c. 24, s. 2 (3).

3. In case the Judge who presides at the trial does not certify as aforesaid, the plaintiff shall recover only County Court costs, or Division Court costs, as the case may be, and the defendant shall be entitled to tax his costs of suit as between attorney and client, and so much thereof as exceeds the taxable costs of defence which would have been incurred in the County Court or Division Court, shall, on entering judgment, be set off and allowed by the Taxing Officer against the plaintiff's County Court or Division Court costs to be taxed, or against the costs to be taxed and the amount of the verdict if it be necessary, and if the amount of the costs so set off exceeds the amount of the plaintiff's verdict and taxed costs, the defendant shall be entitled to execution for the excess against the plaintiff. 31 V. c. 24, s. 2 (4).

If Judge does not certify, plaintiff to recover Inferior Court costs only, and defendant entitled to set off his costs.

**348.** The certificates may be as follows :

Forms of Certificates.

"I certify to entitle the Plaintiff to full costs."

Or,

"I certify to prevent the Defendant deducting costs."

Or,

"I certify to entitle the Plaintiff to County or Division Court costs."

31 V. c. 24, s. 3.

**349.** The plaintiff in any action, which is of the proper competence of a Division Court but is brought in a County Court shall not be entitled to a certificate for full County Court costs, if judgment is recovered in such action by default for want of an appearance or plea, or on the ground only of a commission for the taking of evidence out of the Province having been issued therein or necessary whether judgment be recovered by default or otherwise. 39 V. c. 15, s. 7.

Costs in cases within competence of Division Court brought in County Court.

**350.** Where several suits are brought on one bond, recognizance, promissory note, bill of exchange, or other instrument, or where several suits are brought against the maker and endorser of a note, or against the drawer, acceptor or endorser of a bill of exchange, there shall be collected or recovered from the defendant the costs taxed in one suit only at the election of the plaintiff, and the actual disbursements only in the other suits: but this provision shall not extend to any interlocutory costs in the progress of a cause. (C. S. U. C. c. 22, s. 329; C. S. U. C. c. 42, s. 35).

Where several suits on bonds, etc., costs recoverable in one suit only.

And disbursement in others.

Not to extend to interlocutory costs.



Costs in actions  
and Bailiffs of  
Division  
Courts.

**351.** In case any suit is brought in any of Her Majesty's Courts of Record in respect to any grievances committed by any Clerk, Bailiff or officer of a Division Court, under colour or pretence of the process of such Court, and the jury upon the trial find no greater damages for the plaintiff than ten dollars, the plaintiff shall not have costs unless the Judge certifies in Court upon the back of the record, that the action was fit to be brought in such Court of Record. C. S. U. C. c. 22, s. 330. *See also Rev. Stat. c. 47, s. 233.*

When costs in  
civil suits to be  
regulated by  
the law of  
England.

**352.** In cases not otherwise provided for by statute or Rule of Court, the allowance of costs to either party in civil suits and penal actions shall be regulated by the laws of England, on the fifth day of December, 1859. C. S. U. C. c. 22, s. 313.

Revision of  
taxation of  
costs.

**353.** Either party may as of right, upon giving two days' notice to the opposite party, have the taxation of costs by any Deputy Clerk of the Crown and Pleas revised by the principal Clerk of the Court wherein the proceedings have been had; and the Court or a Judge may, by rule or summons, call upon the Deputy Clerk who has taxed any bill to show cause why he should not pay the costs of revising his taxation and of the application, if in the opinion of the Court or Judge, on the affidavits and hearing the parties, such Deputy Clerk was guilty of gross negligence, or of wilfully taxing fees or charges for services or disbursements larger or other than those sanctioned by the rules and practice of the Court. C. S. U. C. c. 22, s. 331.

When Deputy  
Clerks liable  
to be charged  
with costs.

#### COMPUTATION OF TIME.

First and last  
days of all  
periods of time  
limited by this  
Act or any  
rules or orders  
to be inclusive.

**354.** Unless otherwise expressed, the first and last days of all periods of time limited by this Act, or by any Rules or Orders of Court for the regulation of practice, shall be inclusive. C. S. U. C. c. 22, s. 342.

#### SCHEDULE "A."

##### FORM 1.

(Section 3).

##### WRIT OF SUMMONS WHEN THE DEFENDANT RESIDES WITHIN THE JURISDICTION.

Ontario, } Victoria, by the Grace of God, &c.  
County of } To C. D., of , in the County of

(Seal.)

We command you that within ten days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court (or County Court) of ,

in an action at the suit of A. B. ; and take notice that in default of your so doing the said A. B. may proceed therein to judgment and execution.

Witness, &c.

A. C.,  
Clerk of Process.  
(or Clerk of the County of  
the County of )

*In the margin,*

Issued from the office of the Clerk of the Process [or Deputy Clerk of the Crown and Pleas (or Clerk of the County Court) in the County of ].

(Signed) A. C.,  
Clerk of the Process (or Deputy Clerk,)  
(or Clerk of the County Court).

---

*Memorandum to be subscribed on the Writ.*

N.B.—This Writ is to be served within six months from the date thereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

---

*Endorsements to be made on the Writ before the service thereof.*

This Writ was issued by E. F., of , Attorney for the said Plaintiff; (or this Writ was issued in person by A. B., who resides at mention the City, Town, incorporated or other Village or Township within which such Plaintiff resides).

*Also the endorsement required by the eighteenth section of this Act.*

---

*Endorsement to be made on the Writ after service thereof.*

This Writ was served by X. Y. on C. D., (the Defendant, or one of the Defendants), on , the day of , one thousand eight hundred and

C. S. U. C. c. 22, Form 1.

---

## FORM 2.

(Section 4).

WRIT OF CAPIAS.

Ontario, } Victoria, &c.  
County of } To the Sheriff of, &c.

(Seal.)

We command you that you take C. D., if he shall be found in your County (or United Counties), and him safely keep until he shall have given you bail in an action on promise (or of debt, or covenant, or trespass on the case, or as the cause of action may be, &c.), at the suit of

A. B. against the said C. D. (and E. F., &c., *if there be one or more Defendants not to be arrested*), or until the said C. D. shall by other lawful means be discharged from your custody; And We do further command you, that on execution hereof on the said C. D., you do deliver a copy hereof to the said C. D.: (And We further command you that you serve a copy hereof on the said E. F., &c., *if there be one or more Defendants not to be arrested*;) And We hereby require the said C. D. to take notice that within ten days after execution hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in our Court (or County Court) of \_\_\_\_\_, according to the warning hereunder written (or endorsed hereon), and that in default of his so doing, such proceedings may be had and taken as are mentioned in the said warning; (And We hereby command the said E. F., &c., that within ten days after the service hereof on him, &c., inclusive of the day of service, he do cause an appearance to be entered according to the warning No. 3;) And We do further command you the said Sheriff, that immediately after the execution hereof, you do return this Writ to the said Court, together with the manner in which you shall have executed the same, and the day of the execution hereof; or if the same shall remain unexecuted, then that you do return the same at the expiration of two months from the date hereof, or sooner if you shall be required thereto by order of the Court or of a Judge.

A. C.,

Clerk of Process.

(or Clerk of the County Court  
of the County of \_\_\_\_\_.)

Witness, &c.

*In the margin,*

Issued from the office of the Clerk of the Process [or Deputy Clerk of the Crown and Pleas (or Clerk of the County Court) in the County of \_\_\_\_\_.]

(Signed)

A. C.,

Clerk of the Process (or Deputy Clerk,)

(or Clerk of the County Court).

*Memorandum to be subscribed on the Writ.*

N.B.—This Writ is to be executed within two months from the date hereof, including the day of such date, and not afterwards.

*Warning to the Defendant.*

1. If a Defendant, being in custody, shall be detained on this Writ, or if a Defendant, being arrested thereon, shall go to prison for want of bail, the Plaintiff may declare against any such Defendant before the end of the Term next after such arrest, and proceed thereon to judgment and execution.

2. If a Defendant, having given bail to the Sheriff on the arrest, shall omit to put in special bail conditioned for his surrender to the Sheriff of the County from which the Writ of *Capias* issued, and file the bail piece in the office of the Clerk or Deputy Clerk of the Crown and Pleas (or of the Clerk of the County Court) for the same County, the Plaintiff may proceed against the Sheriff or on the bail bond.

3. If a Defendant, having been served with this Writ and not arrested thereon, shall not enter an appearance within ten days after such service, in the office of the Clerk or Deputy Clerk of the Crown (or of the Clerk of the County Court) from which the writ issued, the Plaintiff may proceed to judgment and execution.

*Endorsement to be made on the Writ before the service thereof.*

This Writ was issued by E. F., of \_\_\_\_\_, Attorney,  
&c., as in form No. 1.

Bail for \$ \_\_\_\_\_ by order of \_\_\_\_\_, naming the Judge  
who makes the order.

(Also the Endorsement required by the eighteenth section of this Act.)

*Endorsement to be made on the Writ after execution thereof.*

This Writ was executed by X. Y., by arresting C. D. (or as the case may  
be as to service on any Defendant) on \_\_\_\_\_, the \_\_\_\_\_ day  
of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

C. S. U. C. c. 22, Form 2.

### FORM 3.

(Sections 48, 55).

WRIT WHERE THE DEFENDANT, BEING A BRITISH SUBJECT, RESIDES  
OUT OF ONTARIO.

Ontario, } Victoria, &c.  
County of } To C. D., of

(Seal.)

We command you that within \_\_\_\_\_ days (here insert a sufficient  
number of days, according to the directions in this Act) after the service of  
this Writ on you, inclusive of the day of such service, you do cause  
an appearance to be entered for you in our Court (or County Court)  
of \_\_\_\_\_, in an action at the suit of A. B. ; And take notice,  
that in default of your so doing, the said A. B. may, by leave of the  
Court or a Judge, proceed therein to judgment and execution.

Witness, &c.

A. C. (Clerk of the Process.)  
(or Clerk of the County Court  
of the County of \_\_\_\_\_).

In the margin,

Issued from the office of, &c. (as in foregoing cases.)

*Memorandum to be subscribed on the Writ.*

N.B.—This Writ is to be served within six months from the date  
thereof, or if renewed, then from the date of such renewal, including day  
of such date, and not afterwards.





eight hundred and \_\_\_\_\_, and you are required, within \_\_\_\_\_ days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the office of the Clerk (or Deputy Clerk) of the Crown (or of the Clerk of the County Court) for the County of \_\_\_\_\_, to the said action, and in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed thereon to judgment and execution.

(Signed) A. B., the Plaintiff in person,  
or  
E. F., Plaintiff's Attorney.

C. S. U. C. c. 22, Form 4.

FORM 5.

(Section 19).

SPECIAL ENDORSEMENT.

After the Endorsement required by the eighteenth section of this Act, this special Endorsement may be inserted.

The following are the particulars of the Plaintiff's claim :—

1877.		
January 10.—Five barrels of Flour, at \$4 .....	\$ 20 00	
July 2.—Money lent to the Defendant.....	120 00	
October 1.—A Horse sold to Defendant.....	100 00	
	\$240 00	
Paid .. .....	30 00	
Balance due.....	\$210 00	

Or,

To Bread (or Butchers' Meat) supplied between the 1st January, 1876, and 1st January, 1877 .. .....	\$160 00
Paid .. .....	50 00
Balance due.....	\$110 00

(If any account has been delivered, it may be referred to with its date, or the Plaintiff may give such a description of his claim as on a particular of demand, so as to prevent the necessity of an application for further particulars.)

Or,

\$400, principal and interest, due on a bond dated the \_\_\_\_\_ day of \_\_\_\_\_, conditioned for the payment of \$300 and interest.

Or,

\$400, principal and interest, due on a covenant contained in a deed, dated the \_\_\_\_\_ day of \_\_\_\_\_, to pay \$2,000 and interest.

*Or,*

\$400, on a Bill of Exchange for that amount, dated the 2nd February, 1877, accepted (*or drawn or endorsed*) by the Defendant, with interest and Notarial charges.

*Or,*

\$400, on a Promissory Note for that amount, dated the 2nd February, 1877, made (*or endorsed*) by the Defendant, with interest and Notarial charges.

*Or,*

\$400, on a Guarantee, dated the 2nd February, 1877, whereby the Defendant guaranteed the due payment by E. F., of goods supplied (*or to be supplied*) to him.

(*In all cases where interest is lawfully recoverable, and is not above expressed, add: "The Plaintiff claims interest on \$ , from the day of , until judgment."*)

N.B.—Take notice, that if a Defendant served with this Writ within Ontario does not appear according to the exigency thereof, the Plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed (with interest) and the sum of , for costs, and issue execution at the expiration of eight days from the last day for appearance.

C. S. U. C. c. 22, Form 5.

---

## FORM 6.

(Section 47).

### WRIT OF CAPIAS IN AN ACTION ALREADY COMMENCED.

Ontario,	}	Victoria, &c.
County of		To the Sheriff of, &c.

(Seal.)

We command you, that you take C. D., if he shall be found in your County (*or United Counties*), and him safely keep until he shall have given you bail in the action on promises (*or of debt, &c.*), which A. B. has commenced against him, and which action is now pending, or until the said C. D. shall, by other lawful means, be discharged from your custody; And We do further command you, that on execution hereof, you do deliver a copy to the said C. D., and that immediately after execution hereof, you do return this Writ to our Court (*or County Court*) of , together with the manner in which you shall have executed the same and the day of the execution hereof; and if the same shall remain unexecuted, then that you do so return the same at the expiration of two months from the date hereof, or sooner if you shall be required thereto by order of the said Court or a Judge; And We do hereby require the said C. D., that within ten days after execution hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in Our said Court, according to the warning hereunder written (*or endorsed hereon*), and that in default of his so doing, pro-

ceedings may be had and taken as are mentioned in the warning in that behalf.

Witness, &c.

A. C.,  
Clerk of the Process.  
(or Deputy Clerk.)  
(or Clerk of the County Court  
of the County of ).

*In the margin,*

Issued from the office of the Clerk of the Process [or Deputy Clerk of the Crown and Pleas (or of the Clerk of the County Court) in the County of .]

(Signed) A. C.,  
Clerk of the Process,  
(or Deputy Clerk.)  
(or Clerk of the County Court.)

---

*Memorandum to be subscribed on the Writ.*

N.B.—This Writ is to be executed within two months from the date hereof, including the day of such date, and not afterwards.

*Warning to the Defendant.*

1. This suit, which was commenced by the service of a Writ of Summons, will be continued and carried on in like manner as if the Defendant had not been arrested on this Writ of *Capias*.

2. If the Defendant, having given bail to the Sheriff on the arrest on this Writ, shall omit to put in special bail for his surrender to the Sheriff of the County from which the Writ of *Capias* issued, and to file the bail piece in the office of the Clerk (or Deputy Clerk) of the Crown and Pleas (or of the Clerk of the County Court) for the County of , the Plaintiff may proceed against the Sheriff or on the bail bond.

---

*Endorsements to be made on the Writ before the execution thereof.*

1. This Writ was issued by E. F., of, &c. (as in form No. 1.)

2. Bail for \$ , by order of (naming the Judge who makes the order.)

Also the Endorsement required by the eighteenth section of this Act.

---

*Endorsement to be made on the Writ after the execution thereof.*

This Writ was executed by arresting U. D. (according to the facts),  
on the day of , one thousand eight hundred  
and

C. S. U. C. c. 22, Form 6.



## FORM 7.

(Section 64).

## JUDGMENT ON DEFAULT OF APPEARANCE.

In the \_\_\_\_\_, &c. (*state the Court.*)On the \_\_\_\_\_ day of \_\_\_\_\_, A.D. one thousand eight hundred and \_\_\_\_\_ (*day of signing judgment.*)

Ontario, } A. B., in his own person (or by \_\_\_\_\_, his Attorney),  
 to wit: } sued out a Writ of Summons against C. D., endorsed according  
 to "*The Common Law Procedure Act*," as follows :

(Here copy special Endorsement.)

And the said C. D. has not appeared : therefore it is considered that  
 the said A. B. recover against the said C. D. \$ \_\_\_\_\_, together with  
 \$ \_\_\_\_\_ for costs of suit.

C. S. U. C. c. 22, Form 7.

## FORM 8.

(Section 181).

## ORDER FOR TRIAL OF AN ISSUE BY CONSENT WITHOUT PLEADINGS.

In the Q. B. (*or C. P., or C. C.*)

The \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_

County of \_\_\_\_\_, } Whereas A. B. has sued C. D., and  
 to wit : } affirms and \_\_\_\_\_ denies,

(Here state the question or questions of fact to be tried.)

And it has been ordered by the Honourable Mr. Justice  
 (*or by His Honour \_\_\_\_\_, Judge of the County Court, &c.*),  
 according to "*The Common Law Procedure Act*," that the said question  
 shall be tried by a jury ; therefore let the same be tried accordingly.

C. S. U. C. c. 22, Form 8.

## FORM 9.

(Section 278.)

## POSTEA (IN A SUPERIOR COURT) WHERE TRIAL OR ASSESSMENT OF DAMAGES HAS BEEN HAD BY A JUDGE WITHOUT A JURY.

Afterwards on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord  
 18 \_\_\_\_\_, at the sitting of Assize and Nisi Prius holden at the \_\_\_\_\_  
 in and for the \_\_\_\_\_ Count of \_\_\_\_\_ the  
 Honourable Chief Justice (*or, the Honourable Mr. Justice, as the*

case may be) , before whom the said issues were tried without a jury, found all the issues within joined in favour of the plaintiff, (or, of the defendant, or found the first, second, third and fourth issues within joined in favour of the plaintiff, and found the fifth, sixth and seventh issues within joined in favour of the defendant, or as the case may be), and the said Judge assessed the damages of the plaintiff at

over and above his costs, (or, if a verdict be found for defendant for a balance on a plea of set-off, insert after the word "Judge" the words, found a balance due to the defendant, and assessed his damages at

over and above his costs.) Therefore, &c., (or, if an assessment only, omit all after the word "whom" and insert the following, the damages of the plaintiff were enquired of without a jury, assessed the same at the sum of over and above costs of suit. Therefore, &c.)

36 V. c. 9, Form A.

---

### FORM 10.

(Section 278).

POSTEA (IN A COUNTY COURT) WHERE TRIAL OR ASSESSMENT OF DAMAGES HAS BEEN HAD BY A JUDGE WITHOUT A JURY.

Afterwards on the day of in the year of our Lord 18 , at a sitting of the County Court of the Count of holden at the of in the said Count for trials and assessments, the presiding Judge before whom the said issues were tried without a jury, found all the issues within joined in favour of the plaintiff (or, of the defendant, or, found the first, second, third and fourth issues within joined in favour of the plaintiff, and found the fifth, sixth and seventh issues within joined in favour of the defendant, or as the case may be), and the said Judge assessed the damages of the plaintiff at over and above his costs, (or if a verdict be found for defendant for a balance on a plea of set-off, insert after the word "Judge" the words found a balance due to the defendant, and assessed his damages at over and above his costs. Therefore, &c., (or, if an assessment only, omit all after the word "whom" and insert the following, the damages of the plaintiff were enquired of without a jury, assessed the same at the sum of over and above costs of suit. Therefore, &c.)

36 V. c. 9, Form B.

---

### FORM 11.

(Section 324.)

FORM OF A RULE OR SUMMONS WHERE A JUDGMENT CREDITOR APPLIES FOR REVIVAL OF JUDGMENT AND EXECUTION AGAINST A JUDGMENT DEBTOR.

(Formal parts as at present.)

C. D., to show cause why A. B. (or as the case may be) should not be at liberty to enter a suggestion on the Roll in an action wherein the said

A. B. was Plaintiff, and the said C. D. Defendant, and wherein the said A. B. obtained judgment for \$ \_\_\_\_\_ against the said C. D., on the \_\_\_\_\_ day of \_\_\_\_\_; that it manifestly appears to the Court that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay to the said A. B. the costs of this application to be taxed.

NOTE.—*The above may be modified so as to meet the case of an application by or against the representative of a party to the judgment.*

C. S. U. C. c. 22, Form 9.

---

### FORM 12.

(Section 325.)

FORM OF SUGGESTION THAT THE JUDGMENT CREDITOR IS ENTITLED TO EXECUTION AGAINST THE JUDGMENT DEBTOR.

And now on the \_\_\_\_\_ day of \_\_\_\_\_, it is suggested and manifestly appears to the Court, that the said A. B. (or E. F., as executor of the last will and testament of the said A. B., deceased *or as the case may be*), is entitled to have execution of the judgment aforesaid, against the said C. D. (or against G. H., as the executor of the last will and testament of the said C. D. *or as the case may be*); therefore it is considered by the Court, that the said A. B. (or E. F., as such executor as aforesaid, *or as the case may be*) ought to have execution of the said judgment against the said C. D. (or against G. H. as such executor as aforesaid, *or as the case may be*).

C. S. U. C. c. 22, Form 10.

---

### FORM 13.

(Sections 238 and 327.)

FORM OF WRIT OF REVIVOR.

Victoria, &c.

To C. D., of \_\_\_\_\_,

GREETING :

We command you, that within ten days after the service of this Writ upon you, inclusive of the day of such service, you appear in our Court (or County Court) of \_\_\_\_\_, to show cause why A. B. (or E. F., as executor of the last will and testament of the said A. B., deceased, *or as the case may be*) should not have execution against you (if against a representative here insert, as executor of the last will and testament of \_\_\_\_\_, deceased, *or as the case may be*), of a judgment, whereby the said A. B. (or as the case may be) recovered against you (or as the case may be) \$ \_\_\_\_\_; and take notice, that in default of your doing so, the said A. B. (or as the case may be) may proceed to execution.

Witness, &c.

C. S. U. C. c. 22, Form 11.

## SCHEDULE "B."

## FORMS OF PLEADINGS.

*(Sections 92 and 141).*

## DECLARATIONS.

*On contracts.*

1. Money payable by the Defendant to the Plaintiff for *(these words "money payable," &c., should precede money counts like 1 to 11, but need only be inserted in the first)* goods bargained and sold by the Plaintiff to the Defendant.

2. Work done and materials provided by the Plaintiff for the Defendant at his request.

3. Money lent by the Plaintiff to the Defendant.

4. Money paid by the Plaintiff for the Defendant at his request.

5. Money received by the Defendant for the use of the Plaintiff.

6. Money found to be due from the Defendant to the Plaintiff on accounts stated between them.

7. A messuage and lands sold and conveyed by the Plaintiff to the Defendant.

8. The Defendant's use by the Plaintiff's permission of messuage and lands of the Plaintiff.

9. The hire of *(as the case may be)*, by the Plaintiff let to hire to the Defendant.

10. Freight for the conveyance by the Plaintiff for the Defendant at his request of goods in *(ships, &c.)*

11. The demurrage of a *(ship)* of the Plaintiff kept on demurrage by the Defendant.

12. That the Defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, by his Promissory Note now overdue, promised to pay to the Plaintiff \$ \_\_\_\_\_, *(two)* months after date, but did not pay the same.

13. That one A., on, &c. *(date)*, by his Promissory Note now overdue, promised to pay to the Defendant or order \$ \_\_\_\_\_, *(two)* months after date, and the Defendant endorsed the same to the Plaintiff, and the said Note was duly presented for payment and was dishonoured, whereof the Defendant had due notice, but did not pay the same.

14. That the Plaintiff, on, &c. *(date)*, by his Bill of Exchange now overdue, directed to the Defendant, required the Defendant to pay to the Plaintiff \$ \_\_\_\_\_, *(two)* months after date, and the Defendant accepted the said Bill, but did not pay the same.



15. That the Defendant, on, &c. (*date*), by his Bill of Exchange to A. required A. to pay the Plaintiff \$ , (*two*) months after date, and the said Bill was duly presented for acceptance and was dishonoured, of which the Defendant had due notice, but did not pay the same.

16. That the Plaintiff and Defendant agreed to marry one another, and a reasonable time for such marriage has elapsed, and the Plaintiff has always been ready and willing to marry the Defendant, yet the Defendant has neglected and refused to marry the Plaintiff.

17. That the Defendant by warranting a horse to be then sound and quiet to ride, sold the said horse to the Plaintiff, yet the said horse was not then sound and quiet to ride.

18. That the Plaintiff and Defendant agreed by charter party, that the Plaintiff's schooner called the *Toronto*, should with all convenient speed sail to *Hamilton*, and that the Defendant should there load her with a full cargo of flour and other lawful merchandize, which she should carry to *Kingston* and there deliver, on payment of freight per barrel, and that the Defendant should be allowed four days for loading and four days for discharging and four days for demurrage, if required, at \$ per day; and that the Plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said schooner at *Hamilton*, and that the time for so loading has elapsed, yet the Defendant made default in loading the agreed cargo.

19. That the Plaintiff let the Defendant a house, being (*designate it*) for years, to hold from the day of , A.D. , at \$ a year, payable quarterly, of which rent quarters are due and unpaid.

20. The Plaintiff by deed let to the Defendant a house (*designate it*), to hold for seven years from the day of A.D. , and the Defendant by the said deed covenanted with the Plaintiff well and substantially to repair the said house during the said term (*according to the covenant*), yet the said house was during the said term out of good and substantial repair.

*For Wrongs independent of Contract.*

21. That the Defendant broke and entered certain land of the Plaintiff called lot No. &c., and depastured the same with cattle.

22. That the Defendant assaulted and beat the Plaintiff, gave him into custody to a Constable, and caused him to be imprisoned in the Common Gaol.

23. That the Defendant debauched and carnally knew the Plaintiff's wife.

24. That the Defendant converted to his own use (*or wrongly deprived the Plaintiff of the use and possession of*) the Plaintiff's goods, that is to say (*mentioning what articles, as, for instance, household furniture.*)

25. That the Defendant detained from the Plaintiff his title deeds of land called lot No. &c., in &c., that is to say (*Describe the deeds.*)

26. That the Plaintiff was possessed of a mill, and by reason thereof was entitled to the flow of a stream for working the same, and the Defendant, by cutting the bank of the said stream, diverted the water thereof away from the said mill.

27. That the Defendant, having no reasonable or probable cause or believing that the Plaintiff, unless forthwith apprehended, was about to quit Ontario with intent to defraud his creditors generally, or the said Defendant in particular, maliciously represented that such was the fact, and thereupon maliciously procured a Judge's order for the issue of bailable process against the said Plaintiff, and caused the Plaintiff to be arrested and held to bail for \$

28. That the Defendant falsely and maliciously spoke and published of the Plaintiff the words following, that is to say, "He is a thief." (If there be any special damage, here state it, with such reasonable particularity as to give notice to the Defendant of the peculiar injury complained of, as, for instance, whereby the Plaintiff lost his situation as shopman in the employ of N.)

29. That the Defendant falsely and maliciously published of the Plaintiff in a newspaper called the words following, that is to say, "He is a regular prover under bankruptcies," the Defendant meaning thereby that the Plaintiff had proved, and was in the habit of proving, fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious (or as the case may be.)

C. S. U. C. c. 22, Forms B.

*In joint actions on Bills and Notes.*

30. For that whereas the said (the maker of the Note), on the day of , at , made his Promissory Note in writing, and thereby promised (setting forth the Note in the usual manner), and the said (the first, second or other endorsers) duly endorsed the same, and the said (the last endorser) delivered the said Note, so endorsed, to the Plaintiff (aver presentment, notice, &c., where by law necessary in the particular case). By reason whereof the said (all the Defendants) became jointly and severally liable to pay to the Plaintiff the said sum of money in the said Note specified. (Add the usual breach).

C. S. U. C. c. 42, Schedule.

31. For that whereas the said (the drawer), on the day of , at , drew his certain Bill of Exchange in writing directed to (setting forth the Bill according to its tenor and effect), and the said (the drawee) duly accepted the same, and the said (the first and other endorsers) afterwards duly endorsed the said Bill of Exchange, and the said (the last endorser) delivered the said Bill, so endorsed, to the said Plaintiff (aver presentment, protest, notice, &c., where by law necessary in the particular case). By reason whereof the said (all the Defendants) became jointly and severally liable to pay to the said Plaintiff the said sum of money in the said Bill specified. (Add the usual breach.)

C. S. U. C. c. 42, Schedule.

## PLEAS.

*Commencement of Plea.*

32. The Defendant, by \_\_\_\_\_, his Attorney (or in person), says  
(*here state the substance of the Plea.*)

33. And for a second Plea, the Defendant says (*here state the second Plea.*)

*Pleas in Actions on Contracts.*

34. That he never was indebted as alleged. (N.B.—*This Plea is applicable to other declarations like those numbered 1 to 11.*)

35. That he did not promise as alleged. (*This plea is applicable to other declarations on simple contracts not on bills or notes, such as those numbered from 16 to 19. It would be unobjectionable to use "did not warrant," "did not agree," or any other appropriate denial.*)

36. That the alleged deed is not his deed.

37. That the alleged cause of action did not accrue within \_\_\_\_\_ years  
(*state the period of limitation applicable to the case*) before the suit.

38. That before action he satisfied and discharged the Plaintiff's claim by payment.

39. That the Plaintiff, at the commencement of this suit, was, and still is, indebted to the Defendant in an amount equal to (*or greater than*) the Plaintiff's claim for (*state the cause of the set-off as in a declaration, see form ante*), which amount the Defendant is willing to set off against the Plaintiff's claim (*or, and the Defendant claims to recover a balance from the Plaintiff.*)

40. That after the claim accrued, and before this suit, the Plaintiff, by deed, released the Defendant therefrom.

*Pleas in Actions for Wrongs independent of Contract.*

41. That he is not guilty.

42. That he did what is complained of by the Plaintiff's leave.

43. That the Plaintiff first assaulted the Defendant, who thereupon necessarily committed the alleged assault in his own defence.

44. That the Defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof, for twenty years before this suit, enjoyed, as of right and without interruption, a way on foot and with cattle from a public highway over the said land of the Plaintiff to the said land of the Defendant, and from the said land of the Defendant over the said land of the Plaintiff, to the said public highway, at all times of the year, for the more convenient occupation of the said land of the Defendant, and that the alleged trespass was the use by the Defendant of the said way.

## REPLICATIONS.

45. The Plaintiff takes issue upon the Defendant's first, second, &c., Pleas.

46. The Plaintiff, as to the second Plea, says : (*here state the answer to the Plea, as in the following forms.*)

47. That the alleged release is not the Plaintiff's deed.

48. That the alleged release was procured by the fraud of the Defendant.

49. That the alleged set-off did not accrue within six years before this suit.

50. That the Plaintiff was possessed of land whereon the Defendant was trespassing and doing damage, whereupon the Plaintiff requested the Defendant to leave the said land, which the Defendant refused to do, and thereupon the Plaintiff gently laid his hands upon the Defendant in order to secure him, doing no more than was necessary for that purpose, which is the alleged first assault by the Plaintiff.

51. That the occupiers of the said land did not, for twenty years before this suit, enjoy, as of right and without interruption, the alleged way.

---

NEW ASSIGNMENTS.

52. The Plaintiff as to the                      and                      Pleas, says that he sues not for the trespasses therein admitted, but for trespasses committed by the Defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions and for other purposes than those referred to in the said Pleas.

*If the Plaintiff replies and new assigns, the new assignment may be as follows :*

53. And the Plaintiff as to the                      and                      Pleas, further says that he sues, not only for the trespasses in those Pleas admitted, but also for, &c.

*If the Plaintiff replies and new assigns to some of the Pleas, and new assigns only to the other, the form may be as follows :*

54. And the Plaintiff as to the                      and                      Pleas, further says that he sues not for the trespasses in the                      Pleas (*the Pleas not replied to*) admitted, but for the trespasses in the                      Pleas (*the Pleas replied to*) admitted, and also for, &c.



## CHAPTER 51.

## An Act respecting the practice in Actions of Ejectment.

- 
- |  |  |
|--|--|
| <p>Short title, s. 1.<br/>Commencement of action by writ, ss. 2-4.<br/>Notice of plaintiff's title, ss. 5, 6.<br/>Service of writ, ss. 7, 8.<br/>Appearance of defendants, s. 9.<br/>    "    landlords, ss. 10-12.<br/>Defences—nature and mode of setting up, ss. 13-19.<br/>Judgment by default, s. 20.<br/>Record, s. 21.<br/>Notice of jury, s. 22.<br/>Changing venue, s. 23.<br/>Special cases, s. 24.<br/>Trial, s. 25.<br/>Vexatious defences, ss. 26-28.<br/>Damages to defendant where he has made improvements on land not his own, owing to an unskilful survey, ss. 29, 30.<br/>Judgment and Execution, ss. 31-36.<br/>Enrolment of proceedings, s. 37.<br/>Effect of judgments in ejectment, s. 38.<br/>Proceedings on death, &amp;c., of parties, ss. 39-49.</p> | <p>Discontinuance of action by plaintiff, ss. 50, 51.<br/>Confession of action by defendants, ss. 52-54.<br/>Failure of plaintiff to proceed to trial, s. 55.<br/>Ejectment by joint tenants, ss. 56, 57.<br/>Penalty on tenants not notifying landlords, s. 58.<br/>Ejectment by landlord:<br/>    Where half year's rent is in arrear, ss. 59-62.<br/>    Equitable relief of tenant, s. 63.<br/>    Stay of proceedings if rent paid, s. 64.<br/>    Where lease is determined:<br/>        Security by tenant, ss. 65-67.<br/>        Execution in such cases, s. 68.<br/>        Recognizances, s. 69.<br/>        Mesne profits, recovery of, s. 70.<br/>Ejectment by mortgagees, ss. 71, 72.<br/>Security for costs where successive actions brought, s. 73.<br/>Jurisdiction of Courts in ejectment, s. 74.<br/>Real actions abolished, s. 75.</p> |
|--|--|
- 

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.      1. This Act may be cited as "*The Ejectment Act.*"

## WRIT.

How action to be commenced      2. The action of ejectment shall be commenced by writ, directed to the person in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the writ with reasonable certainty. C. S. U. C. c. 27, s. 1.

Contents of writ.      3. The writ shall state the names of all the persons in whom the title is alleged to be, and shall command the persons to whom it is directed to appear in the Court from which it is issued within sixteen days after service thereof, to defend the

possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession. C. S. U. C. c. 27, s. 2.

4. The writ shall bear teste of the day on which it issues, and shall be issued out of the proper office in the County wherein the lands lie, and shall be in force for three months, and shall be in the words or to the effect of Form No. 1 in the Schedule to this Act, and the name and abode of the attorney issuing the same or, if no attorney, the name and residence of the party shall be endorsed thereon in like manner as the endorsements on writs of summons in personal actions; and the same proceedings may be had to ascertain whether the writ was issued by the authority of the attorney whose name appears endorsed thereon, and who and what the plaintiffs are, and their abode, and as to staying the proceedings upon writs issued without authority, as in the case of writs in personal actions. C. S. U. C. c. 27, s. 3.

Teste and out  
of what office  
to issue.  
Duration and  
contents of.

#### NOTICE OF TITLE.

5. To the writ and to every copy thereof served on any party, shall be attached a notice of the nature of the title intended to be set up by the plaintiff, as, for example, by grant from the Crown, or by deed, lease or other conveyance derived from or under the grantee of the Crown, or by marriage, descent or devise, stating to or from whom, or by length of possession, or otherwise, according to the nature of the plaintiff's title, stating it with reasonable certainty. C. S. U. C. c. 27, s. 4.

Notice of  
plaintiffs' title  
to be attached  
to the writ,

6. Such notice may contain any number of modes in which title is set up: but the opposite party shall be at liberty to apply to the Court or a Judge to strike out any mode upon the ground of embarrassment or delay; and at the trial the plaintiff shall be confined to proof of the title set up in the notice; but the plaintiff shall not be required to set out in such notice the date or particular contents of any letters patent, deed, will or other instrument or writing which shows or supports his title, or the date of any marriage or death, unless it be specially directed by order of the Court or a Judge. 36 V. c. 8. s. 62.

Contents of  
notice.

#### SERVICE.

7. The writ shall be served in the same manner as a declaration in ejectment was formerly served, or in such manner as the Court or a Judge may order. C. S. U. C. c. 27, s. 6.

Service of  
Writ.

8. In case of a vacant possession, service may be by posting a copy of the writ and notice upon the door of the dwelling-house or other conspicuous part of the property. C. S. U. C. c. 27, s. 7.

If possession  
vacant.

## APPEARANCE.

When defendants to appear notice to be thereupon given.

**9.** The persons named as defendants in the writ, or any of them, may appear within the time appointed, and with the appearance shall file a notice addressed to the plaintiff, stating that besides denying the title of the plaintiff, the party asserts title in himself, or in some other person (stating the person) under whom he claims, and setting forth the mode in which such title is claimed, in like manner, to the same extent, and subject to the same conditions, rules and restrictions as are hereinbefore set forth in respect to the notice of a plaintiff's title, and the giving proof thereof at the trial. C. S. U. C. c. 27, s. 8

Landlords, &c. may appear.

**10.** Any other person not named in the writ may, by leave of the Court or a Judge, appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant. C. S. U. C. c. 27, s. 9.

In what office appearance and proceedings to be entered.

**11.** All appearances shall be entered and all subsequent proceedings conducted in the office from which the writ issued. C. S. U. C. c. 27, s. 10.

What landlords to do if they appear.

**12.** Any person appearing to defend as landlord in respect of property whereof he is in possession, in person or by his tenant, shall state in his appearance that he appears as landlord, and he may set up any defences which a landlord appearing in an action of ejectment has heretofore been allowed to set up, and no others. C. S. U. C. c. 27, s. 11.

## DEFENCE.

The defence may be limited if notice given.

**13.** Any person appearing to such writ may limit his defence to a part only of the property mentioned therein, describing that part with reasonable certainty in a notice entitled in the Court and cause, and signed by him or his attorney, which notice must be served within four days after appearance, upon the attorney whose name is endorsed on the writ, if any; and if none, then filed in the proper office; and an appearance without such notice confining the defence to a part, shall be deemed an appearance to defend for the whole. C. S. U. C. c. 27, s. 12.

Defence on equitable grounds.

**14.** In case the defendant, or any other person not named in the writ who has obtained leave to appear and defend, has a defence to the action upon equitable grounds, he may, in addition to the notice denying the plaintiff's title, and asserting title in himself, state by way of defence the facts which entitle him on equitable grounds to retain possession; and such statement shall begin with the words "*For a defence on equitable grounds.*" 36 V. c. 8, s. 4.

To the whole or part of the property.

**15.** Such defence on equitable grounds may be set up as to the whole of the property mentioned in the writ, or may be limited to part thereof. 36 V. c. 8, s. 5.

**16.** Where a defence on equitable grounds is set up under the two preceding sections, the plaintiff may, within the same time as he may now reply to a plea on equitable grounds in any other action, file a statement setting up any facts which avoid such defence on equitable grounds: and such statement shall begin with the words "*For a reply to the defendant's statement of defence on equitable grounds.*" 36 V. c. 8. s. 6.

Plaintiff may reply on equitable grounds,

**17.** The plaintiff, instead of filing a statement under the foregoing section, may demur to the statement of facts filed by the defendant, or he may file a statement in reply as to part, and demur as to other part. 36 V. c. 8. s. 7.

order demur to the whole or part.

**18.** Want of "reasonable certainty," in the description of the property or part of it, in the writ, or in the notice of defence, or in the notice of the title given by either party, shall not nullify them, but shall only be ground for an application to a Judge for better particulars of the land claimed or defended, or of the title thereto, which a Judge may order in all cases. C. S. U. C. c. 27, s. 13.

If notice too vague, a better may be ordered.

**19.** The Court or a Judge may strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants. C. S. U. C. c. 27, s. 14.

Defence of persons out of possession may be restrained.

#### JUDGMENT BY DEFAULT.

**20.** In case no appearance is entered within the time appointed, or if an appearance is entered but the defence is limited to part only, the plaintiff may sign a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply, which judgment, if for all, may be in the words or to the effect of Form No. 2 in the Schedule to this Act; and if for part, may be in the words or to the effect of Form No. 3 in said Schedule. C. S. U. C. c. 27, s. 15.

Judgment in case of non-appearance or defence for part only.

Form of.

**2.** In case no appearance is entered within the time appointed, and in case the plaintiff files the writ, and an affidavit of personal service thereof, (or in case of service on a corporation, files an affidavit of service in the manner authorized for service on corporations,) and also files an affidavit that the party so served was at the time of the issue of such writ in actual adverse possession of the land, or instead of such affidavits obtains and files a rule of Court or Judge's order, allowing him to sign judgment as well for his costs as for recovery of possession of the land, such plaintiff may at once sign judgment that the person whose title is asserted in the writ shall recover and have possession of the land, and also his costs (to be taxed in the ordinary way), and the plaintiff may forthwith issue execution thereupon; and such last-mentioned judgment may be in the words or to the effect of Form No. 2 in the Schedule

Costs in ejectment in default of appearance.



to this Act, with the words following or words to the same effect added thereto, namely: "*and do also recover against the said C. D.*" (the defendant) \$      *for his cost of suit.*" 36 V. c. 14, s. 1.

## RECORD.

If appearance is entered, plaintiff may make up record.

Form of.

Actions of ejectment may be tried by a jury.

Notice.

**21.** In case an appearance is entered, the plaintiff or his attorney may, without any pleadings, make up a record of the issue by setting forth the writ and stating the fact of the appearance with its date, and the notice limiting the defence, if any, of each of the persons defending, so that it may appear for what defence is made; and such record in case defence is made for the whole, may be in the words or to the effect of Form No. 4; and in case defence is made for part, may be in the words or to the effect of Form No. 3 in the Schedule to this Act. C. S. U. C. c. 27, s. 16; *See* 32 V. c. 6, s. 18; 36 V. c. 9, s. 2.

**22.** If the plaintiff or defendant desires the issues to be tried, and the damages, if any, to be assessed by a jury—in the case of plaintiff, he shall annex to the record, and on or before the day of service of notice of trial, file in the office from which the writ issued, and, in the case of the defendant, he shall file with his appearance, a notice in the words following:—

"The Plaintiff (*or the Defendant as the case may be*), requires that the issues in this cause be tried and the damages (if any) be assessed by a jury."

and where the plaintiff gives such notice he shall serve a copy thereof on or before the day of service of the notice of trial. 35 V. c. 19, s. 1. *See Rule of Court, Hilary Term, 1876.*

## CHANGING VENUE.

Court may alter place of trial on affidavit.

**23.** On the application of either party, and on grounds shown by affidavit, the Court or a Judge may order that the trial shall take place in any County other than that in which the venue is laid, and such order being suggested on the record the trial may be had accordingly. C. S. U. C. c. 27, s. 23.

## SPECIAL CASES.

A special case may be stated.

**24.** By consent of the parties and by leave of a Judge, a special case may be stated as in other actions. C. S. U. C. c. 27, s. 20.

## TRIAL.

Questions to be tried if no special case agreed upon.

**25.** If no special case is agreed to, the plaintiffs may proceed to trial in the same manner as in other actions, and the particulars of the claim and defence and of the notices of plaintiffs and defendants of their respective titles, if any, or copies thereof, shall be annexed to the record by the plaintiffs; and except in the cases hereinafter mentioned, the question at the

trial shall be whether the statement in the writ of the title of the plaintiffs is true or false, and if true, then which of the plaintiffs is entitled, and whether to the whole or part, and if to part, then to which part of the property in question; and the entry of the verdict may be made in the words or to the effect of Form No. 5 or Form No. 6 in the Schedule to this Act, with such modifications as may be necessary to meet the facts. C. S. U. C. c. 27, s. 21.

VEXATIOUS DEFENCES.

**26.** It being desirable, in actions of ejectment brought against persons who are merely intruders, not to prevent plaintiffs from recovering land of which they have just claim on account of some want of technical form in their title, or some imperfection not affecting the merits of the case, and of which mere strangers to the title, having no claim or colour of legal claim to the possession, should not be permitted to take advantage; the plaintiff or his attorney, in any action of ejectment, may serve a notice upon the defendant in words or to the effect following :

Provision respecting vexatious defences without merits.

“Take notice that I claim the premises for which this action is brought as the *bona fide* purchaser thereof, from A. B. , (or as heir at law of A. B. of or as the case may be), and that you will be required to show upon the trial of this cause what legal right you have to the possession of the premises.”

Form of notice.

C. S. U. C. c. 27, s. 17.

**27.** If, upon the trial of such action of ejectment, the evidence of title given by the plaintiff satisfies the Court (and the jury, if the case is tried by a jury) that he is entitled in justice to be regarded as the proprietor of the land or is entitled to the immediate possession thereof for any term of years, but that he cannot show a perfect legal title by reason of some want of legal form in some instrument produced, or by reason of the defective registration of some will or instrument produced, or from any cause not within the power of the plaintiff to remedy by using due diligence, the Judge, or the jury, under the direction of the Court, may find a verdict for the plaintiff, unless the defendant or his counsel, upon being required by the other party so to do, gives such evidence of title as shows that he is the person legally entitled, or that he *bona fide* claims to be the person legally entitled to the land, by reason of the defect in the title of the plaintiff, or that he holds, or *bona fide* claims to hold, under the person so entitled. C. S. U. C. c. 27, s. 18.

Formal defects in plaintiff's title aided, when and how;

**28.** Where a verdict is rendered under the authority of the foregoing provision, it shall be endorsed as given under the twenty sixth and twenty seventh sections of this Act and it shall be stated in the postea and entry of the judgment to have been so given; and in any action thereafter brought for the *mesne*

The verdict to be endorsed as rendered under this Act.

profits, such judgment in ejectment shall not be evidence to entitle the plaintiff to recover. C. S. U. C. c. 27, s. 19.

DAMAGES TO DEFENDANT FOR IMPROVEMENTS MADE ON LAND NOT HIS OWN, IN CONSEQUENCE OF UNSKILFUL SURVEY.

As to cases where, from unskilful survey, a party has improved lands afterwards found to belong to his neighbour.

Rev. Stat. c. 146.

**29.** In case an action of ejectment is brought against any person who, after any line or limit has been established according to *The Act respecting Surveyors and the Survey of Lands*, is found, in consequence of unskilful survey, to have improved on lands not his own, the Judge of Assize before whom such action is tried shall assess or direct the jury to assess damages for the defendant for any loss he may sustain in consequence of any improvement made before the commencement of such action, and also assess or direct the jury to assess the value of the land to be recovered and if the verdict or finding be for the plaintiff, no writ of possession shall issue until the plaintiff has tendered or paid the amount of such damages, or has offered to release the said land to the defendant, provided the defendant, before the fourth day of the ensuing Term, pays or tenders to the plaintiff the value of the land so assessed. C. S. C. c. 77, s. 105; C. S. U. C. c. 93, s. 53.

Plaintiff not to have costs in such cases from the time defendant offers to give up the lands on receiving the value of his improvements stating the amount.

**30.** In all cases in which the Judge or the jury before whom any action of ejectment is tried assess damages for the defendant as provided in the next preceding section, for improvements made upon land not his own in consequence of unskilful survey, and where it satisfactorily appears that the defendant does not contest the plaintiff's action for any other purpose than to obtain the value of the improvements made upon the land previous to the alteration and establishment of the lines according to law, the Judge before whom such action is tried shall certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the plaintiff had been non-suited on the trial, or a verdict had been rendered for the defendant; provided the defendant, at the time of appearing, gave notice in writing to the plaintiff in such action of ejectment, or to his attorney named in the writ, of the amount claimed for such improvements, and that on payment of such amount the defendant or person in possession would surrender the possession to the plaintiff, and that the said defendant did not intend at the trial to contest the title of the plaintiff; and if on the trial it be found that such notice was not given as aforesaid, or if there be assessed for the defendant a less amount than that claimed in the notice, or it be found that the defendant had refused to surrender possession of the land after tender made of the amount claimed, then and in any such case the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the plaintiff; and upon the trial of any cause after such notice no evidence shall be required to be produced in proof of the title of the plaintiff. C. S. C. c. 77, s. 106; C. S. U. C. c. 93, s. 54.

Unless the improvements are assessed at less than the sum demanded.

When no proof of plaintiff's title required.

## JUDGMENT AND EXECUTION.

**31.** In case the title of the plaintiff, as alleged in the writ, existed at the time of service thereof, but had expired before the trial, the plaintiff shall, notwithstanding, be entitled to a verdict, according to the fact, that he was entitled at the time of serving the writ, and to judgment for his costs of suit. C. S. U. C. c. 27, s. 22.

If plaintiff was entitled at service of writ, but not afterwards.

**32.** If the defendant appears, and the plaintiff does not appear at the trial, the plaintiff shall be non-suited; and if the plaintiff appears and the defendant does not appear, the plaintiff shall be entitled to recover without any proof of his title. C. S. U. C. c. 27, s. 24.

Defendant appearing and plaintiff making default, and *vice versa*.

**33.** The jury, or the Judge, if the case be tried without a jury, as the case may be, may find a special verdict, and either party may tender a bill of exceptions. C. S. U. C. c. 27, s. 25.

Special verdict, &c.

**34.** Subject to the provisions of sections two hundred and eighty-five and two hundred and eighty-six of "*The Common Law Procedure Act*," upon a finding for the plaintiff, judgment may be signed and execution issued for the recovery of possession of the property, or of such part thereof as the plaintiff has been found entitled to, and for costs, within the time (not exceeding the fifth day in the Term next after the verdict) ordered by the Court or by the Judge who tried the cause, and if no such order is made, then on the fifth day in the Term next after the verdict. C. S. U. C. c. 27, s. 26.

Judgment if plaintiff recover. Rev. Stat. c. 50, ss. 285, 286.

**35.** Upon a finding for the defendant, judgment may be signed and execution for costs issued against the plaintiff named in the writ, within the same time and in like manner as upon a finding for the plaintiff. C. S. U. C. c. 27, s. 27.

Execution and costs.

Costs to defendant, if plaintiff fails.

**36.** Upon judgment for recovery of possession and costs, there may be either one writ or separate writs of execution for the recovery of possession, and for the costs, at the election of the plaintiff. C. S. U. C. c. 27, s. 28.

One or more writs of execution may issue.

## ENROLLING PROCEEDINGS.

**37.** It shall not be necessary before issuing execution on any judgment in ejectment to enter the proceedings upon any roll, but an *incipitur* thereof may be made upon paper, shortly describing the nature of the judgment, and the judgment may thereupon be signed, and costs taxed and execution issued; but the proceedings shall be entered on the roll whenever the same becomes necessary for the purpose of evidence or of appealing, or the like. C. S. U. C. c. 27, s. 48.

Proceedings need not be enrolled before execution.



## EFFECT OF JUDGMENT.

Effect of judgment.

**38.** The effect of a judgment in ejectment shall be the same as that of a judgment in ejectment obtained before the tenth day of August, 1856. C. S. U. C. c. 27, s. 49.

## PROCEEDINGS ON DEATH OF PARTIES.

Death of either party not to abate action, etc.

**39.** The death of a plaintiff or defendant shall not cause the action to abate, but it may be continued as hereinafter provided. C. S. U. C. c. 27, s. 31.

Right of one plaintiff surviving to another.

**40.** In case of the death of a plaintiff, if the right of the deceased plaintiff survives to another plaintiff, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving plaintiff; and if such a suggestion be made before the trial, then the surviving plaintiff shall have a verdict, and recover such judgment as aforesaid, upon proof that he was entitled to bring the action either separately or jointly with the deceased plaintiff. C. S. U. C. c. 27, s. 32.

If the right of the deceased plaintiff does not survive to another, etc.

**41.** In case of the death before trial of one of several plaintiffs whose right does not survive to another or others of the surviving plaintiffs, and the legal representative of the deceased plaintiff does not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving plaintiff for such share of the property as he is entitled to and costs. C. S. U. C. c. 27, s. 33.

One or more of several plaintiffs dying after verdict for them but before execution.

**42.** In the case of a verdict for two or more plaintiffs, if one of such plaintiffs dies before execution executed, the other plaintiff may, whether the legal right to the property survives or not, suggest the death in manner aforesaid, and proceed to judgment and execution for the recovery of possession of the entirety of the property and costs; but this shall not affect the right of the legal representative of the deceased plaintiff or the liability of the surviving plaintiff to such legal representative, and the entry and possession of such surviving plaintiff under such execution shall be considered an entry and possession on behalf of such legal representative in respect of the share of the property to which he is entitled as such representative, and the Court may direct possession to be delivered accordingly. C. S. U. C. c. 27, s. 34.

Death of sole plaintiff, or one whose right does not survive to another.

**43.** In case of the death of a sole plaintiff, or in case of the death before trial of one of several plaintiffs whose right does not survive to another or others of the plaintiffs, the legal representative of such plaintiff may, by leave of the Court or a

Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion is made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased plaintiff, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion as hereinbefore provided with reference to a judgment for or against such plaintiff; and if in case of a sole plaintiff the suggestion be made after trial and before execution executed by delivery of possession thereunder, and the suggestion is denied by the defendant within eight days after notice thereof, or such further time as the Court or a Judge allows, then such suggestion shall be tried, and if upon the trial thereof a verdict passes for the person making the suggestion, he shall be entitled to such judgment as aforesaid, for the recovery of possession and for the costs of and occasioned by the suggestion, and in case of a verdict for the defendant, the defendant shall be entitled to such judgment as aforesaid for costs. C. S. U. C. c. 27, s. 35.

**44.** In case of the death before or after judgment of one of several defendants who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution. C. S. U. C. c. 27, s. 36.

Death of one of several joint defendants.

**45.** In case of the death of a sole defendant or of all the defendants before trial, a suggestion may be made of the death, and such suggestion shall not be traversable, but only be subject to be set aside if untrue, and the plaintiff shall be entitled to judgment for recovery of possession of the property, unless some other person appears and defends within a time appointed for that purpose, by the order of the Court or a Judge, made upon the application of the plaintiff. C. S. U. C. c. 27, s. 37.

Death of sole defendant or of all the defendants before trial.

**46.** The Court or a Judge, upon such suggestion being made, and upon such application as aforesaid, may order that the plaintiff shall be at liberty to sign judgment at such time as the Court or a Judge thinks fit, unless the person then in possession, by himself or his tenant, or the legal representative of the deceased defendant, appears within such time and defends the action; and such order may be served in the same manner as the writ, and in case such person appears and defends, the same proceedings may be taken against such new defendant as if he had originally appeared and defended the action, and if no appearance is entered and defence made, then the plaintiff may sign judgment pursuant to the order. C. S. U. C. c. 27, s. 38.

After suggestion judgment may be signed at the time limited by Judge's order.

**47.** In case of the death of a sole defendant or of all the defendants after verdict, the plaintiff shall, nevertheless, be entitled to judgment as if no such death had taken place, and may

Death of sole defendant or of all the defendants after verdict.

proceed by execution for recovery of possession without suggestion or revivor, and may proceed for the recovery of the costs in like manner as upon any other judgment for money, against the legal representatives of the deceased defendant. C. S. U. C. c. 27, s. 39.

Death before trial of a defendant defending separately for part.

**48.** In case of the death, before trial, of one of several defendants who defends separately for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of a sole defendant, or the plaintiff may proceed against the surviving defendants in respect of the portion of the property for which they defend. C. S. U. C. c. 27, s. 40.

Death before trial of the defendant who defends separately, but for property for which others also defend.

**49.** In case of the death, before trial, of one of several defendants who defends separately in respect to property for which the surviving defendants also defend, the Court or a Judge, upon the application of the person in possession of the property at the time of the death, or the legal representative of the deceased defendant, may at any time before trial allow such person or representative to appear and defend on such terms as appear reasonable and just; and if no such application is made or leave granted, the plaintiff suggesting the death in manner aforesaid may proceed against the surviving defendants to judgment and execution. C. S. U. C. c. 27, s. 41.

#### DISCONTINUING.

Plaintiff may discontinue as to one or more defendants.

**50.** The plaintiff may at any time discontinue the action as to one or more of the defendants, by giving to the defendant or his attorney a notice, headed in the Court and cause, and signed by the plaintiff or his attorney, stating that he discontinues such action, and thereupon the defendant, on receiving such notice, may forthwith sign judgment for the costs in the the words or to the effect of Form No. 7 in the Schedule to this Act. C. S. U. C. c. 27, s. 42.

One of several plaintiffs may discontinue.

**51.** In case one of several plaintiffs desires to discontinue, he may apply to the Court or a Judge to have his name struck out of the proceedings, and an order may be made therefor on such terms as to the Court or Judge seems fit, and the action shall thereupon proceed at the suit of the other plaintiffs. C. S. U. C. c. 27, s. 43.

#### CONFESSION OF ACTION.

Sole defendant or all the defendants may confess the action as to the whole or part of the property.

**52.** A sole defendant or all the defendants may confess the action as to the whole or a part of the property, by giving to the plaintiff a notice headed in the Court and cause, signed by the defendant or defendants, and the signature attested by his or their attorney, and thereupon the plaintiff may forthwith sign judgment and issue execution for the recovery of posses-

sion and costs, in the words or to the effect of Form No. 8 in the Schedule to this Act. C. S. U. C. c. 27, s. 45.

**53.** In case one of several defendants who defends separately for a portion of the property for which the other defendant or defendants do not defend, desires to confess the plaintiff's title to such portion, he may give a like notice to the plaintiff, and thereupon the plaintiff may forthwith sign judgment and issue execution for the recovery of possession of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue. C. S. U. C. c. 27, s. 46.

And so may one of several defendants defending for a part for which others do not defend.

**54.** In case one of several defendants who defends separately in respect of property for which other defendants also defend, desires to confess the plaintiff's title, he may give a like notice thereof, and thereupon the plaintiff may sign judgment against such defendant for the costs occasioned by his defence, and may proceed in the action against the other defendants to judgment and execution. C. S. U. C. c. 27, s. 47.

And if others defend as to the same part.

#### PLAINTIFF NOT PROCEEDING TO TRIAL.

**55.** If after appearance entered, the plaintiff, without going to trial, allows to elapse the time fixed by the practice of the Court for going to trial in ordinary cases after issue joined, the defendant may give twenty days' notice to the plaintiff to proceed to trial at the Assizes next after the expiration of the notice, and if the plaintiff afterwards neglects to give notice of trial for such Assizes, or to proceed to trial in pursuance of the said notice given by the defendant, and the time for going to trial has not been extended by the Court or a Judge, the defendant may sign judgment in the words or to the effect of Form No. 9 in the Schedule to this Act, and recover the costs of the defence. C. S. U. C. c. 27, s. 44.

Plaintiff not proceeding to trial in due time after notice.

#### JOINT TENANTS, ETC.

**56.** In case the action has been brought by some or one of several persons entitled as joint tenants, tenants in common or coparcenary, any joint tenant, tenant in common or coparcener in possession may at the time of appearance, or within four days after, give notice in the same form as the notice of a limited defence, that he or she defends as such and admits the right of the plaintiff to an undivided share of the property (stating what share), but denies any actual ouster of him from the property, and may within the same time file an affidavit, stating with reasonable certainty that he or she is joint tenant, tenant in common or coparcener, and the share of such property to which he or she is entitled, and that he or she has not ousted the plaintiff, and such notice shall be entered in the record in the same manner as the notice limiting the defence, and

As to defendants being joint tenants, tenants in common, etc., admitting right of plaintiff to share, etc.



upon the trial the additional question of whether an actual ouster had taken place shall be determined. C. S. U. C. c. 27, s. 29.

Question to be tried if such joint tenancy, etc., with plaintiff be found, etc., and the contrary.

**57.** If upon any trial such as last aforesaid, it be found that the defendant is joint tenant, tenant in common, or coparcener with the plaintiff, then the question whether an actual ouster had taken place shall be tried, and unless such actual ouster is proved the defendant shall be entitled to judgment and costs; but if it is found either that the defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster had taken place, then the plaintiff shall be entitled to judgment for the recovery of possession and costs. C. S. U. C. c. 27, s. 30.

#### TENANTS TO NOTIFY LANDLORDS.

Penalty on tenant receiving writ of ejectment and not notifying his landlord.

**58.** Every tenant to whom a writ in ejectment has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his bailiff or receiver, and if he omits so to do, he shall forfeit to the person of whom he holds, the value of three years improved or rack rent of the premises demised or holden in the possession of such tenant, to be recovered by action in any Court of Common Law having jurisdiction for the amount. C. S. U. C. c. 27, s. 50.

#### EJECTMENT BY LANDLORDS.

##### *Where a half-year's rent in arrear.*

Landlord having power to re-enter for non-payment of rent, may recover possession by ejectment.

**59.** In all cases between landlord and tenant, as often as it happens that one half year's rent is in arrear, and the landlord or lessor to whom the same is due has the right by law to re-enter for non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises; or in case the same cannot be legally served or no tenant is in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action of ejectment is not for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in the writ; and such affixing shall be deemed legal service thereof, which service or affixing of the writ shall stand instead and in place of a demand and re-entry. C. S. U. C. c. 27, s. 51.

And how such right shall be exercised.

**60.** In case of judgment against the defendant for non-appearance, if it is shown by affidavit, to the Court wherein the action is depending, or is proved upon the trial in case the defendant appears, that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, the lessor shall

recover judgment and have execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made; but if a verdict passes for the defendant, or if the plaintiff is non-suited, the defendant shall recover his costs. C. S. U. C. c. 27, s. 52.

**61.** In case the lessee or his assignee, or other person claiming or deriving title under the said lease, permits and suffers judgment to be had on such trial and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for equitable relief within six months after execution executed, then and in every such case the said lessee and his assignee and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in Law or Equity, other than by proceedings by way of appeal from such judgment, and the said landlord or lessor shall from thenceforth hold the demised premises discharged from such lease. C. S. U. C. c. 27, s. 53. See 36 V. c. 8, s. 8.

Consequences  
of the exercise  
of such right.

**62.** Nothing hereinbefore contained shall bar the right of any mortgagee of such lease or any part thereof who is not in possession, if such mortgagee, within six months after such judgment obtained and execution executed, pays all rent in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion, and performs all covenants and agreements which on the part and behalf of the first lessee are to be or ought to be performed. C. S. U. C. c. 27, s. 54.

As to mortga-  
gees of lease.

**63.** In case the said lessee, his assignee or other person claiming any right, title or interest in Law or Equity of, in or to the said lease, proceeds for equitable relief within the time aforesaid, such person shall not have or continue any injunction against the proceedings in the action of ejectment, unless, within forty days next after the plaintiff in such action of ejectment has filed his answer to the Bill or other proceeding for equitable relief, he brings into Court and lodges with the proper officer such sum of money as the lessor or landlord swears to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain until the hearing of the application for equitable relief, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court; and in case such proceedings for equitable relief are taken within the time aforesaid and after execution has been executed, the lessor or landlord shall be accountable only for so much as he really and *bona fide*, without fraud, deceit or wilful neglect, has made of the demised premises from the time of his entering into the actual possession thereof, and if what he has so made is less than the rent reserved on the said lease, then the said lessee or his assignee, before being restored to his possession, shall pay such

Proceedings if  
the tenant  
ejected seeks  
equitable  
relief.

If such pro-  
ceedings be  
after execution  
executed.

lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the lands. C. S. U. C. c. 27, s. 55. *See* 36 V. 8, s. 8.

Discontinu-  
ance if tenant  
pays arrears of  
rent and costs  
before trial,  
etc.

If he receive  
equitable  
relief.

**64.** If the tenant or his assignee at any time before the trial in the action of ejectment pays or tenders to the lessor or landlord, or to his attorney in the cause, or pays into the Court wherein the cause is depending, all the rent and arrears together with the costs, all further proceedings in the action of ejectment shall cease; and if such lessee or his assigns, upon such proceeding as afore-said, obtains equitable relief he and they shall have, hold and enjoy the demised lands according to the lease thereof made, without any new lease. C. S. U. C. c. 27, s. 56. *See* 36 V. c. 8, s. 8.

*Where lease is determined and tenant refuses to go out.*

Proceedings  
when the time  
for which any  
tenant holds  
the lands leas-  
ed has expired,  
and the tenant  
refuses to  
deliver posses-  
sion after  
notice.

**65.** In case (1,) the term or interest of any tenant of any lands, tenements or hereditaments, holding the same under a lease or agreement in writing for any term or number of years certain, or from year to year, expires or is determined either by the landlord or tenant by regular notice to quit; and (2,) in case a lawful demand of possession in writing, made and signed by the landlord or his agent, is served personally upon the tenant or any person holding or claiming under him, or is left at the dwelling house or usual place of abode of such tenant or person; and (3,) in case such tenant or person refuses to deliver up possession accordingly, and the landlord thereupon proceeds by action of ejectment for recovery of possession, he may, at the foot of the writ in ejectment, address a notice to such tenant or person, requiring him to find such bail, if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified. C. S. U. C. c. 27, s. 57.

Circumstances  
under which  
landlord may  
give notice to  
tenant to find  
security.

**66.** Upon the appearance of the party, or in case of non-appearance, then on making and filing an affidavit of service of the writ and notice, and on the landlord's producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit (as the case may be), and that possession has been lawfully demanded in manner aforesaid, the landlord may move the Court or apply to a Judge in Chambers for a rule or summons for such tenant or person to show cause, within a time to be fixed by the Court or Judge on a consideration of the situation of the premises, why such tenant or person should not enter into a recognizance by himself and two sufficient securities, in a reasonable sum, conditioned to pay the costs and damages which may be recovered by the plaintiff in the action, and the Court or Judge, upon cause shown or upon affidavit of the service of

the rule or summons in case no cause is shown, may make the same absolute in whole or in part, and order such tenant or person within a time to be fixed, upon a consideration of all the circumstances, to find such bail with such conditions and in such manner as may be specified in the said rule or summons, or the part of the same so made absolute. C. S. U. C. c. 27, s. 58.

**67.** In case the party neglects or refuses to comply with such rule or order, and gives no ground to induce the Court or Judge to enlarge the time for obeying the same, then the lessor or landlord, upon filing an affidavit that such rule or order has been made and served and not complied with, may sign judgment for the recovery of possession and costs of suit, in the words or to the effect of Form No. 10 in the Schedule to this Act. C. S. U. C. c. 27, s. 59.

If not given when ordered, judgment may be signed.

**68.** If upon the trial of any case in which such security has been given as aforesaid, a verdict passes for the plaintiff, the Judge before whom the trial is had may (unless he is of opinion that the defendant should have an opportunity of moving against the verdict) order that judgment be entered and execution issued in favour of the plaintiff at the expiration of six days next after the giving of such verdict. C. S. U. C. c. 27, s. 61.

Court may order execution within six days in cases where security is given, unless, &c.

**69.** All recognizances and securities entered into in pursuance of this Act shall be taken respectively in such manner and by and before such persons as are provided and authorized in respect of recognizances of bail upon actions and suits depending in the Superior Courts of Common Law, and subject to the like fees and charges; but no action or other proceeding shall be commenced upon any such recognizance or security after six months from the time when the possession of the premises or any part thereof has been actually delivered to the landlord. C. S. U. C. c. 27, s. 62.

All recognizances, &c., to be taken in like manner as bail in the Superior Courts, with like fees, &c.

Limitation of actions upon such recognizance, &c.

### *Mesne profits.*

**70.** Wherever it appears on the trial of an ejectment at the suit of a landlord against a tenant, that the tenant or his attorney has been served with due notice of trial, the Judge before whom the cause comes on to be tried shall (whether the defendant appears upon the trial or not, permit the plaintiff after proof of his right to recover possession of the whole or any part of the premises mentioned in the writ, to go into evidence of the mesne profits thereof which have or might have accrued from the day of the expiration or determination of the tenant's interest in the same, down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein; and if on the trial a verdict is found for the plaintiff the same shall be given upon the whole matter both as to the

Court may allow proof of mesne profits at trial, the landlord having first established his right to recover possession, &c.



As\*to mesne profits after verdict, &c.

recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits ; and in such case the landlord shall have judgment within the time hereinbefore provided, not only for the recovery of possession of costs, but also for the mesne profits so found ; and the landlord may after the verdict bring an action for the mesne profits which accrue from the time of the verdict, or from the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment. C. S. U. C. c. 27, s. 60.

#### EJECTMENT BY MORTGAGEES.

Action of ejectment brought by mortgagee.

**71.** In case an action of ejectment is brought by a mortgagee or his assignees for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit is then depending in the Court of Chancery for or touching the foreclosing or redeeming the same, if the person having right to redeem appears and becomes defendant in such action, at any time pending the action, and pays to such mortgagee, or, in case of his refusal to accept, brings into Court where the action is depending all the principal moneys and interest due on such mortgage, and also such costs as have been expended in any suit at Law or in Equity thereupon (such money, for principal, interest and costs, to be ascertained and computed by the Court where the action is pending, or by the proper officer by such Court to be appointed for that purpose), the moneys so paid or brought into such Court shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the Court shall discharge every such mortgagor or defendant of and from the same accordingly, and shall by rule of the same Court compel such mortgagee to assign, surrender or reconvey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee has therein, and to deliver up all deeds, evidences and writings in his custody relating to the title of such mortgaged lands, tenements and hereditaments unto the mortgagor who has paid or brought such moneys into the Court, or to such other person as he for that purpose nominates and appoints. C. S. U. C. c. 27, s. 74.

Discharge of mortgage.

Not to extend to cases where the right to redeem or the sum due is contested.

**72.** In case the person against whom the redemption is prayed, insists (by writing under his hand or the hand of his attorney, agent or solicitor) that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or are admitted on the other side, and delivers such writing to the attorney or solicitor for the other side before the money is brought into Court, or in case the right of redemption to the mortgaged lands and premises in question in any cause or suit is contravened or questioned by or between different defendants in the same cause or suit, nothing in the last preceding section contained shall extend to any such cause

or suit, nor shall anything therein contained be of any prejudice to any subsequent mortgage or subsequent incumbrance. C. S. U. C. c. 27, s. 75.

#### SECURITY FOR COSTS WHERE SUCCESSIVE ACTIONS BROUGHT.

**73.** If any person brings an action of ejectment after a prior action of ejectment for the same premises has been unsuccessfully brought by him or by any person through or under whom he claims, against the same defendant or against any person through or under whom he defends, the Court or a Judge may, on the application of the defendant, at any time after his appearance entered, order that the plaintiff shall give to the defendant security for the payment of costs, and that all further proceedings in the cause shall be stayed until such security is given, whether the prior action was disposed of by discontinuance or by non-suit, or by judgment for the defendant. C. S. U. C. c. 27, s. 76.

When the plaintiff in subsequent action for the same property may be ordered to give security for costs.

#### JURISDICTION OF COURTS IN EJECTMENT.

**74.** The several Courts and the Judges thereof respectively may and shall exercise over the proceedings in ejectment under this Act, the like jurisdiction as formerly exercised in the old action of ejectment so as to ensure a trial of the title and of actual ouster when necessary, and for all other purposes for which such jurisdiction might have been exercised. C. S. U. C. c. 27, s. 77.

Court may exercise the same jurisdiction as formerly over proceedings.

#### REAL ACTIONS ABOLISHED.

**75.** No writ of right patent, writ of right *quia dominus re-nisit curiam*, writ of right close, writ of right *de rationabili parte*, writ of right upon disclaimer, writ of right of ward, writ of *cessavit*, *quod permittat*, formedon in descender, remainder, or in reverter, writ of Assize of novel disseisin, nuisance, or mort d'ancestor, writ of entry sur disseisin in the *quibus*, in the *per*, in the *per* and *cui*, or in the post, writ of entry *sur* intrusion, writ of entry *sur* alienation, *dum fuit non compos mentis*, *dum fuit infra ætatem*, *dum fuit in prisona*, *ad communem legem in casu proviso*, *in consimili casu*, *cui in vita*, *sur cui in vita*, *cui ante divortium*, or *sur cui ante divortium*, writ of entry *sur* abatement, writ of entry *quare ejecit infra terminum*, or *ad terminum qui præteriit*, or *causa matrimonii prælocuti*, writ of aiel, besaiel, tresaiel, cosinage, or *nuper obiit*, writ of waste, writ of partition, (except such as authorized by statute of this Province,) writ of *disceit*, writ of *quod ei deforceat*, writ of covenant real, writ of *warrantia chartæ*, writ of *curia claudenda*, and no other action, real or mixed (except a writ of dower, or writ of dower *undè nihil habet*, or an action of ejectment), and (except a plaint for dower) no plaint in the nature of any, such writ or action shall be used or brought. C. S. U. C. c. 27, s. 78.

Real actions abolished.

Exceptions.



## FORM 3.

(Sections 20 and 21.)

JUDGMENT BY DEFAULT (FOR PART OF LAND).

In the Q. B. (or C. P.)

On the                      day of                      , one thousand eight hundred and  
(date of the Writ.)

County of           , } On the day and year above written, a Writ of our Lady  
to wit :            } the Queen issued out of this Court, in these words, that  
is to say :

Victoria, &c. (*copy the Writ*) ; and C. D. has on the \_\_\_\_\_ day of \_\_\_\_\_ appeared by \_\_\_\_\_ his Attorney, (*or in person,*) to the said Writ, and has defended for a part of the land in the Writ mentioned, that is to say, (*state the part,*) and no appearance has been entered or defence made to the said Writ, except as to the said part ; Therefore, it is considered that the said A. B. (*the plaintiff*) do recover possession of the land in the said Writ mentioned, except the said part, with the appurtenances, and that he have execution thereof forthwith ; and as to the rest, Therefore, &c.

C. S. U. C. c. 27, Form 3; 36 V. c. 9, s. 2.

## FORM 4.

(Section 21.)

## RECORD (DEFENCE FOR WHOLE LAND).

In the Q. B. (or C. P.)

On the                      day of                      , one thousand eight hundred and  
(date of the Writ.)

County of           , } On the day and year above written, a Writ of our Lady  
to wit:                } the Queen issued out of this Court in these words, that  
is to say :

Victoria, &c. (copy the Writ); and C. D. has on the \_\_\_\_\_ day of \_\_\_\_\_  
 appeared by \_\_\_\_\_, his Attorney, (or in person,) to the  
 said Writ, and defended for the whole of the land therein mentioned;  
 Therefore, &c.

C S. U. C. c. 27, Form 4; 36 V. c. 9, s. 2.





said Writ, and A. B. has discontinued the action ; Therefore, it is considered that the said C. D. be acquitted, and that he recover against the said A. B. \$            for his costs of defence.

C. S. U. C. c. 27, Form 6.

## FORM 8.

(Section 52.)

## JUDGMENT UPON CONFESSION OF ACTION BY DEFENDANT.

In the Q. B. (or C. P.)

The                    day of                    , one thousand eight hundred and  
(date of the Writ.)

County of \_\_\_\_\_, } On the day and year above written, a Writ of our  
to wit : } Lady the Queen issued out of this Court, in these  
words, that is to say :

Victoria, &c. (*copy the Writ*), and C. D. has on the \_\_\_\_\_ day of \_\_\_\_\_, appeared by \_\_\_\_\_, his Attorney, (*or in person,*) to the said Writ, and the said C. D. has confessed the said action, (*or has confessed the said action as to part of the said land, that is to say: state the part;*) Therefore it is considered that the said A. B. do recover possession of the land in the said Writ mentioned, (*or of the said part of the said land,*) with the appurtenances, and \$ \_\_\_\_\_ for costs.

C. S. U. C. c. 27, Form 8.

## FORM 9

(Section 55.)

## JUDGMENT UPON FAILURE OF PLAINTIFF TO PROCEED TO TRIAL.

In the Q. B. (or C. P.)

On the                      day of                      , one thousand eight hundred and  
(date of Writ)

County of \_\_\_\_\_, } On the day and year above written, a Writ of our  
to wit : } Lady the Queen issued out of this Court, in these  
words, that is to say :

Victoria, &c. (copy the Writ), and C. D. has on the \_\_\_\_\_ day of \_\_\_\_\_, appeared by \_\_\_\_\_, his Attorney, (or in person,) to the said Writ, and A. B. has failed to proceed to trial, although duly required so to do ; Therefore it is considered that the said C. D. be acquitted, and that he do recover against the said A. B. \$ \_\_\_\_\_ for his costs of defence.

C. S. U. C. c. 27, Form 9.

## FORM 10.

(Section 67.)

JUDGMENT FOR LANDLORD.

In the Q. B. (or C. P.)

The \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_  
(date of Writ.)

County of \_\_\_\_\_, } On the day and year above written, a Writ of our  
to wit : } Lady the Queen issued out of this Court, with a notice thereunder written, the tenor of which Writ and notice follows in these words, that is to say :

(Copy the Writ and notice, which latter may be as follows :

Take notice that you will be required, if ordered by the Court or a Judge, to give bail by yourself and two sufficient sureties, conditioned to pay the costs and damages which may be recovered in the action.)

And C. D. has appeared by \_\_\_\_\_, his Attorney, (or in person,) to the said Writ, and has been ordered to give bail pursuant to the Statute, and has failed so to do; Therefore it is considered that the said (landlord's name) do recover possession of the land in the said Writ mentioned, with the appurtenances, together with \$ \_\_\_\_\_ for costs of suit.

C. S. U. C. c. 27, Form 9.

## CHAPTER 52.

An Act respecting Writs of Prohibition, Mandamus  
and Injunction.

Interpretation, s. 1.  
Writs of Prohibition, ss. 2,3.  
Writs of Mandamus:  
    In suits, ss. 4-9.  
    On motion to the Court, ss. 10-16.

On motion to a Judge in Cham-  
bers, ss. 17-27.  
Costs, s. 28.  
Protection of persons obeying  
writs, s. 29.  
Writs of Injunction, 30-31.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Interpretation  
of the word  
"Judge."

**1.** The word "Judge" in this Act shall mean a Judge of either of the Superior Courts of Law. 35 V. c. 14, s. 14.

## PROHIBITION.

2. It shall not be necessary to file a suggestion on any application for a writ of prohibition, but such application may be made on affidavit only; and in case the party applying is directed to declare in prohibition before writ issued, such declaration shall be expressed to be on behalf of such party only, and not on behalf of the party and of Her Majesty, and shall contain and set forth in a concise manner so much only of the proceeding in the Court below as may be necessary to show the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a writ of prohibition may issue.

Application for writ of prohibition may be made on affidavit only.

2. The party defendant may demur to such declaration, or plead such matters, by way of traverse or otherwise, as may be proper to show that the writ ought not to issue, and conclude by praying that such writ may not issue.

Pleadings.

3. Judgment shall be given, that the writ of prohibition do or do not issue, as justice may require; and the party in whose favour judgment is given, whether on non-suit, verdict, demurrer or otherwise, shall be entitled to the costs attending the application and subsequent proceedings, and shall have judgment to recover the same; and in case a verdict is given for the party plaintiff in such declaration, damages may be assessed, for which judgment shall also be given, but such assessment shall not be necessary to entitle the plaintiff to costs. 28 V. c. 18, s. 1.

Judgment.

Damages.  
Costs.

3. Any Judge of Her Majesty's Superior Courts of Common Law at Toronto, as well in Term time as in Vacation, may hear and determine applications for writs of prohibition, and may make such rules or orders for the issuing of such writs as might have been made by the Court, and all such rules or orders so made by any such Judge shall have the same force and effect as rules of Court for such purposes have, and such writs shall be issued by virtue of such rules or orders as well in Term time as in Vacation.

Writ of prohibition may be issued by a Judge in Term time or in vacation.

2. Any rule or order made by any such Judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the Court on application made thereto by any party dissatisfied with such rule or order. 28 V. c. 18, s. 2

His order may be set aside by the Court.

## MANDAMUS.

*In Suits.*

4. The plaintiff, in any action in either of the Superior Courts of Common Law, except replevin or ejectment, may endorse upon the writ and copy to be served, a notice that the plaintiff intends to claim a writ of *mandamus*; and the plaintiff may

When a *mandamus* may be obtained in an ordinary action.



thereupon claim in the declaration, either together with any other demand which may be enforced in such action, or separately, a writ of *mandamus* commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested. C. S. U. C. c. 23, s. 1.

Form of declaration.

5. The declaration in such action shall set forth sufficient ground upon which the claim is founded, and shall set forth that the plaintiff is personally interested therein, and that he sustains or may sustain damage by the non-performance of such duty, and that performance thereof has been demanded by him and been refused or neglected. C. S. U. C. c. 23, s. 2.

The pleadings to be as in ordinary actions as nearly as may be.

6. The pleadings and other proceedings in any action in which a writ of *mandamus* is claimed, shall be the same in all respects, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages; and in case judgment is given for the plaintiff that a *mandamus* do issue, the Court in which such judgment is given, besides issuing execution in the ordinary way for the costs and damages, may also issue a peremptory writ of *mandamus* to the defendant, commanding him forthwith to perform the duty to be enforced. C. S. U. C. c. 23, s. 3.

What the writ shall require.

7. Such writ need not recite the declaration or other proceedings or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary writ of execution, except that it shall be directed to the party and not to the Sheriff, and may be issued in Term or Vacation and be made returnable forthwith, and no return thereto, except that of compliance, shall be allowed, but time to return it may upon sufficient ground be allowed by the Court or a Judge, either with or without terms. C. S. U. C. c. 23, s. 4.

Force and effect of the writ.

8. The writ of *mandamus*, so issued as aforesaid, shall have the same force and effect as a peremptory writ of *mandamus*, and, in case of disobedience, may be enforced by attachment. C. S. U. C. c. 23, s. 5.

When the Court may direct a substituted performance.

9. The Court may upon application by the plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the plaintiff or some other person appointed by the Court, at the expense of the defendant; and, upon the act being done, the amount of such expense may be ascertained by the Court either by an enquiry in the nature of an assessment of damages or by reference to the proper officer, as the Court or a Judge orders, and the Court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution. C. S. U. C. c. 23, s. 6.

*On Motion.*

10. Nothing in preceding provisions of this Act contained shall take away the jurisdiction of either of the Superior Courts of Law to grant writs of *mandamus*; nor shall any writ of *mandamus* issued out of such Courts be invalid by reason of the right of the prosecutor to proceed by action for *mandamus* under this Act, but the preceding provisions of this Act, so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative writ of *mandamus* issued by either of the said Superior Courts of Law. C. S. U. C. c. 23, s. 7.

Jurisdiction as to prerogative writs of *mandamus* not to be affected.

11. Whereas the provisions contained in a certain Act of Parliament passed in the ninth year of the reign of Queen Anne, entitled "*An Act for rendering the proceedings upon Writs of Mandamus and information in the nature of a Quo Warranto more speedy and effectual, and for the more easy trying and determining the rights of Offices and Franchises in Corporations and Boroughs*," relating to the writs of *mandamus* therein mentioned, have been found useful and convenient, and the same ought to be extended to the proceedings on other such writs: it is therefore enacted, that the several enactments contained in the said statute relating to the return of writs of *mandamus*, and the proceedings on such returns, and to the recovery of damages and costs, shall be and the same are hereby extended and made applicable to all other writs of *mandamus*, and the proceedings thereon, except so far only as the same are varied or altered by this Act. 28 V. c. 18, s. 3.

Act of 9 Anne, c. 20, cited.

Its provisions extended to all other writs of *mandamus*

12. Whereas writs of *mandamus*, other than such as relate to the offices and franchises mentioned in or provided for by the said Act passed in the ninth year of the reign of Queen Anne, are sometimes issued to officers and other persons, commanding them to admit to offices, or to do or perform other matters in respect whereof the persons to whom such writs are directed claim no right or interest, or whose functions are merely ministerial in relation to such offices or matters; and it may be proper that such officers and persons should in certain cases be protected against the payment of damages or costs to which they may otherwise become liable: it is therefore enacted, that it shall be lawful for the Court to which application is made for any writ of *mandamus* (other than such as relate to the said offices and franchises mentioned in or provided for by the said Act passed in the reign of Queen Anne), if such Court sees fit so to do, to make rules and orders, calling not only upon the persons to whom such writ is required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of costs of the application; and upon the appearance of such other person in compliance with

Recital.

Court may make Rules and Orders calling on all persons having interest in the matter of the writ to show cause against its issuing, &c.

such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and to make all such rules and orders, applicable to the case as are or may be given or mentioned by or in any Act for giving relief against adverse claims upon persons having no interest in the subject of such claims. 28 V. c. 18, s. 4.

Form of return of issues joined, on demurrer, &c.

**13.** The return to be made to any such writ, and issues joined in fact or law upon any traverse thereof, or upon any demurrer, shall be made and joined by and in the name of the person to whom such writ is directed; but nevertheless the same shall, if the Court thinks fit so to direct, be expressed to be made and joined on the behalf of such other person as may be mentioned in such rules; and in that case such other person shall be permitted to frame the return, and to conduct the subsequent proceedings at his own expense; and in such case, if any judgment is given for or against the party suing such writ, such judgment shall be given against or for the person on whose behalf the return is expressed to be made, and such person shall have the like remedy for the recovery of costs and enforcing the judgment as the person to whom the writ was directed might and would otherwise have had. 28 V. c. 18, s. 4.

For or against whom judgment shall be given.

Costs.

Case of death, resignation or removal, of persons making the return, provided for.

**14.** In case the return to any such writ is, in pursuance of the authority given by this Act, expressed to be made on behalf of any other person as aforesaid, the further proceedings on such writ shall not abate or be discontinued by the death or resignation of, or removal from office of the person having made such return, but the same shall and may be continued and carried on in the name of such person; and if a peremptory writ is awarded, the same shall and may be directed to any successor in office or right of such person. 28 V. c. 18, s. 5.

Form of objections to return.

Demurrer.

**15.** In all cases in which the person prosecuting any writ of *mandamus* wishes or intends to object to the validity of any return to the same, he shall do so by way of demurrer to the same, in such and the like manner as is now practised in the Courts of Queen's Bench and Common Pleas in personal actions; and thereupon the said writ and return and the said demurrer shall be entered upon record in the said Courts respectively, and the like further proceedings shall be thereupon had and taken as upon a demurrer to pleadings in personal actions in the said Courts respectively.

Proceedings thereon.

Judgment.

2. The said Courts respectively shall thereupon adjudge either that the said return is valid in law, or that it is not valid in law, or that the writ of *mandamus* is not valid in law; and if they adjudge that the said writ is valid in law, but that the return thereto is not valid in law, then and in every such case they shall also by their said judgment award that a peremptory

*mandamus* shall issue in that behalf, and thereupon such peremptory writ of *mandamus* may be sued out and issued accordingly, at any time after four days from the signing of the said judgment; and it shall be lawful for the said Courts respectively, and they are hereby required, in and by their said judgment, to award costs to be paid to the party in whose favour they thereby decide, by the other party or parties. 28 V. c. 18, s. 7.

Peremptory *mandamus* if the writ be good and the return bad.

Costs.

16. Upon application by motion for any writ of *mandamus* the rule may in all cases be made absolute in the first instance, if the Court thinks fit; and the writ may bear teste on the day of its issuing, and may be made returnable forthwith, whether in Term or in Vacation, but time may be allowed to return it by the Court or a Judge either with or without terms. C. S. U. C. c. 23, s. 8.

Writs may issue in the first instance.

### *Application for writ to a Judge in Chambers.*

17. In all cases in which the Superior Courts of Law have jurisdiction to issue the writ of peremptory *mandamus*, application for the said writ may be made upon affidavit to a Judge, who shall have authority to issue a summons calling upon any person who may, in his judgment, be affected by the writ, if issued, to show cause why the same should not be issued. 35 V. c. 14, s. 1 & 2.

Judge may issue writ of peremptory *mandamus*.

18. It shall be the duty of the Judge to whom the application is made, provided he is of opinion that the case is a proper one for the issue of the same, either in Term time or in Vacation, to make an order for the issue of the said writ under this Act from the Court in the first instance and without a writ *nisi*, and the said writ, when issued, shall have the same force and effect as if it had been issued by rule of the Court. 35 V. c. 14, s. 1.

Duty of Judge.

19. Such summons may be served upon the person or party named therein, either personally or by substitution as may be directed by the Judge, in the same manner as a writ of summons. 35 V. c. 14, s. 3.

Service and direction of writ.

20. The application may be made upon hearing the parties, either in person or by counsel. 35 V. c. 14, s. 4.

Manner of applying.

21. The affidavits upon which the application is made shall be entitled either in the Queen's Bench or in the Common Pleas, and all subsequent proceedings shall be entitled in the Court in which the affidavits on which the application is made were entitled. 35 V. c. 14, s. 13.

Entitling affidavits.

22. Affidavits may be filed in answer to the application, and in reply, according to the practice on Chamber applications. 35 V. c. 14, s. 5.

Filing affidavits.



Cross examination of deponents.

**23.** Every deponent whose affidavit is so filed shall be liable to cross examination and re-examination upon the same in presence of counsel for, or after notice to, all parties, either before the Judge or before any officer of the said Court, to be named by the Judge, and the evidence shall be reduced to writing, returned into Court, and used on the hearing of the application. 35 V. c. 14, s. 6.

Issue of writ.

**24.** Upon hearing the parties who appear, or their counsel, and after service of the said summons upon all proper persons as hereinbefore provided, the Judge shall, if in his opinion it is a proper case for the issue of the said writ, order the issue of the same, and shall by his order direct what is to be done and performed by the person or party to whom the writ is directed, and the writ shall conform to the order; but if in his opinion the application should be refused, the said summons shall be discharged. 35 V. c. 14, s. 7.

Enforcing writ by attachment.

**25.** The Judge shall have the same power in Vacation to enforce obedience to the said writ by attachment, to be issued from the Court, as the Court has in Term time to enforce obedience to a writ issued from the Court upon a rule thereof. 35 V. c. 14, s. 8.

Clerk of the Crown not to grant writ.

**26.** No part of the jurisdiction hereby conferred upon a Judge shall be exercised by the Clerk of the Crown sitting in Chambers; and nothing in the nine next preceding sections of this Act contained shall prevent any person from applying to the Court for the said writ according to the present practice. 35 V. c. 14, s. 11.

Appeal.

**27.** Any order made by a Judge under this Act shall be subject to appeal to the Court in which the affidavits on which the application is made were entitled; and the judgment of the Court upon such appeal shall be subject to a further appeal to the Court of Appeal. 35 V. c. 14, s. 12.

#### *Costs.*

Costs to be in discretion of the Court.

**28.** In all cases of application for any writ of *mandamus* whatsoever, the costs of and incident to such application, whether the writ is granted or refused, and also the costs of the writ, if the same is issued, shall be in the discretion of the Court or Judge, and the Judge shall make such order as to the same as to him seems just. 28 V. c. 18, s. 6; 35 V. c. 14, s. 9. See 36 V. c. 8, s. 60; 36 V. c. 48, s. 326.

#### *Protection of persons obeying writs.*

Person obeying writs of *mandamus* indemnified.

**29.** No action, suit or any other proceeding shall be commenced or prosecuted against any person or persons whomsoever, for or by reason of anything done in obedience to any

peremptory writ of *mandamus* issued under this Act or by any Court having authority to issue writs of *mandamus* 28  
V. c. 18, s. 9.

INJUNCTION.

**30.** The plaintiff may at any time after the commencement of any action, and whether before or after judgment, apply *ex parte* or otherwise to the Court or a Judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of any breach of contract or wrongful act complained of in the action, or from the commission of any breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right; and such writ may be granted or denied by the Court or Judge upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as to such Court or Judge seems reasonable and just; and in case of disobedience, such writ may be enforced by attachment by the Court, or, when such Court is not sitting, by a Judge. C. S. U. C. c. 23, s. 12.

When injunction may be had after action brought.

**31.** Any order for a writ of injunction made by a Judge, or any writ issued by virtue thereof, may be discharged, varied or set aside on application made to the full Court by any party dissatisfied with such order. C. S. U. C. c. 23, s. 13.

Writs and orders for writs to be under the control of the Court.

CHAPTER 53.

An Act respecting Actions of Replevin.

Short title, s. 1.	Replevy by Sheriff—
When goods replevable, ss. 2, 3.	Before service of writ, s. 13.
Replevin in County Courts, s. 4.	Not without order where writ issued without order, s. 14.
Replevin in Division Courts, s. 5.	Where property concealed, ss. 15, 16.
Writ of Replevin :—	Return to writ, s. 17.
When order for issue required, s. 6 (1).	<i>Capias in withernam</i> , s. 18.
Discretion of Judge in such case, s. 7.	Service of writ, ss. 19, 20.
When order may be granted by a County Judge, s. 8.	Proceedings if defendant does not appear, s. 21.
When issued without order, s. 6 (2), (3).	Proceedings if he appears, s. 22.
Applications by defendant to discharge, s. 9.	Venue, s. 23.
Form of, s. 10.	Pleadings, ss. 24-27.
Replevin bond, form, &c., ss. 11, 12.	Damages and costs on judgment by default, ss. 28, 29.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as "*The Replevin Act*."

#### WHEN GOODS REPLEVIABLE.

When goods may be replevied.

2. Wherever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers writings, valuable securities or other personal property or effects have been wrongfully distrained under circumstances in which by the law of England, on the fifth day of December, one thousand eight hundred and fifty-nine, replevin might have been made, the person complaining of such distress as unlawful may obtain a writ of replevin in the manner prescribed by this Act; or in case any such goods, chattels, property or effects have been otherwise wrongfully taken or detained, the owner or other person, or corporation capable of maintaining an action of trespass or trover for personal property, may bring an action of replevin for the recovery thereof, and for the recovery of the damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are brought and maintained by persons complaining of unlawful distresses. C. S. U. C. c. 29, s. 1.

Goods seized in execution not to be replevied by parties.

3. No party to a suit or proceeding, in any Court, shall replevy or take out of the custody of the Sheriff, Bailiff, or other officer, any personal property seized by him under process against such party in such suit or proceeding. 40 V. c. 7, *Sched. A* (92).

#### REPLEVIN IN COUNTY COURTS.

County Courts may grant writ where value of goods does not exceed \$200.

4. In case the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of two hundred dollars, and in case the title to land is not brought in question, the writ may issue from the County Court of any County wherein such goods or other property or effects have been distrained, taken or detained. C. S. U. C. c. 29, s. 3.

#### REPLEVIN IN DIVISION COURTS.

In cases under \$40, writ may issue from Division Court.

5. In case the value of goods or other property or effects distrained, taken or detained, does not exceed the sum of forty dollars, the writ may issue from the Division Court for the Division within which the defendant or one of the defendants resides or carries on business, or where the goods or other property or effects have been distrained, taken or detained. 23 V. c. 45, s. 6.

Procedure in Division Court.

2. The matter shall then be disposed of without formal pleadings, and the powers of the Courts and officers, and the pro-

ceedings generally in the suit shall be, as nearly as may be, the same as in other cases which are within the jurisdiction of Division Courts; and this Act shall, so far as any such suit is concerned, be read as if it formed part of "*The Division Courts Act.*" 23 V. c. 45, s. 7. Rev. Stat. c. 47.

## PROCEDURE.

**6.** No writ of replevin shall issue out of either of the Superior Courts of Law or any County Court, When order for writ required.

1. Unless an order is granted for the writ on an affidavit by the person claiming the property, or some other person showing to the satisfaction of the Court, or Judge, the facts of the wrongful taking or detention which is complained of, as well as the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be); 23 V. c. 45, s. 1.

2. Or unless the person claiming the property, his servant or agent, makes an affidavit which shall be entitled and filed in the Court out of which the writ is to issue, stating, Without an order.

(a) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, (describing the property in the affidavit); Affidavit to obtain writ without an order.

(b) The value thereof to the best of his belief;

(c) That the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, within two calendar months next before the making of the affidavit;

(d) That the deponent is advised and believes that the claimant is entitled to an order for the writ;

(e) And that there is good reason to apprehend that unless the writ is issued without waiting for an order, the delay would materially prejudice the just rights of the claimant in respect to the property; C. S. U. C. c. 29, s. 4; 23 V. c. 45, s. 1 (2).

3. Or in case the property was distrained for rent or damage feasant, unless the person claiming the property, his servant or agent, makes an affidavit (which shall be entitled and filed in the Court from which the writ is to issue), stating, Writ may issue without order if the property was distrained for rent or damage feasant.

(a) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, (describing the property in the affidavit);

(b) The value thereof to the best of his belief;



(c) That the property was taken under colour of a distress for rent or damage feasant, and in such case the writ shall state that the defendant has taken and unjustly detains the property, under colour of a distress for rent or damage feasant (as the case may be). C. S. U. C. c. 29, s. 4; 23 V. c. 45, s. 1 (3).

Discretionary power of the Court or Judge when an application for an order is made.

7. Where an application for an order is made, the Court or Judge may proceed on the *ex parte* application of the plaintiff, or may grant a rule or order on the defendant to show cause why the writ should not issue; and may, on the *ex parte* application, or on the return of the rule or order to show cause, grant or refuse the writ, or direct the Sheriff to take a bond in less or more than treble the value of the property, or may direct him to take and detain the property until the further order of the Court, instead of at once replevying the same to the plaintiff; or may impose any terms or conditions in granting the writ, or in refusing the same, on the return of a rule or order to show cause, as under the circumstances in evidence appear just. 23 V. c. 45, s. 3.

Judges of County Courts (except in York) may issue orders for writ of replevin.

8. Except in the County of York, a Judge of the County Court of the County where the goods are which are sought to be replevied shall have the power of issuing the order in the same manner as by law the Judges of the Superior Courts of Law are empowered to issue the same. 34 V. c. 12, s. 6.

Defendant may apply for a rule to show cause why the writ, &c., should not be discharged, &c.

9. In case a writ of replevin is issued, whether with or without an order, or in case any rule or order is made under the seventh or eighth sections, the defendant may, at any time or from time to time, apply to the Court or Judge, on affidavit or otherwise, for a rule or order on the plaintiff to show cause why the writ, or why the rule or order respecting the same, should not be discharged, or why the same should not be varied or modified, in whole or in part, as therein specified, or why all further proceedings under the writ should not be stayed, or why any other relief, to be referred to in the rule or order so applied for, should not be granted to the defendant, with respect to the return, safety or sale of the property or any part thereof, or otherwise; and the Court or Judge may make such rule or order thereon as, under all the circumstances, best consists with justice between the parties. 23 V. c. 45, s. 4.

Contents of writs and how to be tested.  
Rev. Stat. c. 50.

10. The writ shall state the description and value of the property, and shall be tested in the same manner as a writ of summons under "*The Common Law Procedure Act*," and shall be returnable on the eighth day after the service of a copy thereof, and may be in the words or to the effect of Form 1 in the Schedule to this Act, or otherwise adapted to the circumstances of the case. C. S. U. C. c. 29, ss. 5 & 4 (2).

Sheriff, before he replevies, to take bond.

11. Before the Sheriff acts on the writ he shall take a bond in treble the value of the property to be replevied, as stated in

the writ; which bond shall be assignable to the defendant; and the bond and assignment thereof may be in the words or to the effect of Form 2 in the Schedule to this Act, the condition being varied to correspond with the writ. C. S. U. C. c. 29, s. 8; 23 V. c. 45, s. 5.

**12.** Such bond shall be subject to the provisions of the eighth section of the Act passed by the Imperial Parliament in the eighth and ninth years of the reign of His Majesty King William the Third, and chaptered eleven. 39 V. c. 7, s. 8.

Replevin bond to be subject to 8 & 9 Wm. iii c. 11, s. 8.

**13.** The Sheriff shall not serve a copy of the writ until he has replevied the property, or some part of the property therein mentioned, if he cannot replevy the whole in consequence of the defendant having eloiigned the same out of his County, or because the same is not in the possession of the defendant, or of any person for him. C. S. U. C. c. 29, s. 7.

Sheriff not to serve writ till he has replevied.

**14.** In case the writ issues without an order, the Sheriff shall take and detain the property, and shall not replevy the same to the plaintiff without the order of a Judge or a rule of the Court in that behalf; but may, within fourteen days from the time of his taking the same, re-deliver it to the defendant, unless in the meantime the plaintiff obtains and serves on the Sheriff a rule or order directing a different disposition of the property; but this section shall not apply in case of a distress for rent or damage feasant, under the third sub-section of the sixth section of this Act. 23 V. c. 45, s. 2.

What Sheriff shall do when the writ issues without a Judge's order.

**15.** In case the property to be replevied or any part thereof is secured or concealed in any dwelling house or other building or enclosure of the defendant, or of any other person holding the same for him, and in case the Sheriff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same is not delivered to him within twenty-four hours after such demand, he may, and if necessary shall, break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ aforesaid. C. S. U. C. c. 29, s. 9.

If property to be replevied is concealed in any house, &c., how Sheriff to act.

**16.** If the property to be replevied, or any part thereof, is concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and in case the Sheriff demands from the defendant or such other person as aforesaid deliverance thereof, and deliverance is neglected or refused, he may, and if necessary shall, search and examine the person and premises of the defendant or of such other person for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ C. S. U. C. c. 29, s. 10.

If concealed about the person or premises.

When writ to be returned with Schedule annexed.

**17.** The Sheriff shall return the writ at or before the return-day thereof, and shall transmit annexed thereto,

What Schedule to contain.

1. The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto;

2. The place of residence and additions of the sureties;

3. The number, quantity and quality of the articles of property replevied; and in case he has replevied only a portion of the property mentioned in the writ, and cannot replevy the residue by reason of the same having been eloigned out of his County by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy and the reason why not. C. S. U. C. c. 29, s. 11.

If Sheriff returns that the property has been eloigned, a writ in *withernam* may issue.

**18.** If the Sheriff makes such a return of the property distrained, taken or detained, having been eloigned, as would warrant the issuing of a *capias in withernam* by the law of England, on the fifth day of December, one thousand eight hundred and fifty-nine, then upon the filing of such return, such a writ shall be issued by the officer who issued the writ of replevin, in the words or to the effect of Form 3 in the Schedule to this Act, and before executing such writ the Sheriff shall take pledges, according to the law of England on the said day in that behalf, in like manner as in cases of distress. C. S. U. C. c. 29, s. 20.

Copy of writ to be served.

**19.** A copy of the writ shall be served on the defendant personally, or, if he cannot be found, by leaving the copy at his usual or last place of abode, with his wife or some other grown person, being a member of his household, or an inmate of the house wherein he resided as aforesaid. C. S. U. C. c. 29, s. 6.

Replevin proceedings when defendant cannot be served.

**20.** In case it is shown by affidavit to the satisfaction of the Court or of a Judge having jurisdiction in the case, that the defendant cannot be served with a copy of the writ in any of the modes authorized by the preceding section, the Court or Judge, if the defendant has not appeared, may either require some further attempt to effect service, or appoint some act to be done or some notice of the proceedings to be published in such manner as the Court or Judge deems proper; and thereupon (or upon the first application if the Court or Judge thinks fit) the Court or Judge may authorize the plaintiff to proceed in the action in such manner and subject to such conditions as the Court or Judge directs or imposes. 37 V. c. 7, s. 37.

If defendant having been served does not appear.

**21.** In case the defendant has been duly served with a copy of the writ, and does not enter his appearance in the suit at the

return thereof, it shall not be necessary for the plaintiff to enter an appearance for the defendant, but the plaintiff on filing the writ and an affidavit of service thereof, or a rule of Court or a Judge's order for leave to proceed, may proceed in the action in the same manner as in an action commenced by an ordinary writ of summons. C. S. U. C. c. 29, s. 12; 37 V. c. 7, s. 38.

Appearance  
by or for  
defendant not  
requisite.

Procedure.

**22.** In any such case, or upon an appearance being duly entered by the defendant in the office of the Clerk or Deputy Clerk of the Crown, or of the Clerk of the County Court from whose office the writ of replevin issued, the plaintiff and defendant respectively shall (in the absence of any provision herein or in any Rules of the Superior Courts of Common Law to the contrary) declare, avow, reply, rejoin and otherwise plead to issue and take all subsequent proceedings to trial and judgment according to the practice in replevin in England, on the said fifth day of December, 1859, so far as applicable to the Court having cognizance of the case, but all such proceedings shall be taken respectively within the same time as in other personal actions in the same Court, and in case of default so to do, the parties respectively shall be liable to the like judgment and proceedings as in such personal actions under "*The Common Law Procedure Act.*" C. S. U. C. c. 29, s. 14.

If defendant  
appear, plain-  
tiff to declare,  
&c.

Rev. Stat. c.  
50.

**23.** Where the replevin is brought for goods, chattels or other personal property distrained for any cause, the venue shall be laid in the County in which the distress has been made, but in other cases it may be laid in any County. C. S. U. C. c. 29, s. 13.

Where venue  
to be laid.

**24.** Where the action is founded on a wrongful detention, and not on the original taking of the property, the declaration shall conform to the writ, and may be the same as in an action of detainue. C. S. U. C. c. 29, s. 17.

Form of decla-  
ration for  
wrongful  
detention, &c.

**25.** Where the action is founded on a wrongful taking and detention of the property, it shall not be necessary for the plaintiff to state in his declaration a place certain within the City, Town, Township or Village, as the place at which the property was taken. C. S. U. C. c. 29, s. 18.

Form of decla-  
ration for  
wrongful  
taking, &c.

**26.** If the defendant justifies or avows the right to take or distrain the property, in or upon any place in respect of which the same might be liable to forfeiture, or to distress for rent, or for damage feasant, or for any custom, rate or duty, by reason of any law, usage or custom at the time existing and in force, he shall state in his plea of justification or avowry a place certain within the City, Town, Township or Village within the County, as the place at which such property was so distrained or taken. C. S. U. C. c. 29, s. 19.

When defen-  
dant to state a  
place certain  
in his avowry.



Provisions of  
Rev. Stat. c.  
50 as to plead-  
ings.

**27.** The foregoing provisions as to pleading are in addition to the provisions of "*The Common Law Procedure Act.*"

Damages on  
judgment by  
default.

**28.** In case the plaintiff becomes entitled to sign judgment by default, he shall be at liberty to sign final judgment for the sum of five dollars, and costs according to the proper scale, but shall not be entitled to recover a larger sum except upon an assessment before a Judge or jury, or upon filing the written consent of the defendant or his attorney, and an affidavit verifying the signature to such consent. 37 V. c. 7, s. 39.

Costs on  
assessment if  
no more than  
85.

**29.** In case upon an assessment aforesaid after interlocutory judgment by default, the plaintiff does not recover a larger amount than the said sum of five dollars, he shall tax such costs only as he would have obtained had he signed final judgment for the said sum under the preceding section, unless a Judge otherwise orders. 37 V. c. 7, s. 40.

## SCHEDULE OF FORMS.

### FORM 1.

(Section 10.)

#### WRIT OF REPLEVIN.

County or  
United Counties of { Victoria, by the Grace of God, of the United  
Kingdom of Great Britain and Ireland,  
(as the case may be.) } Queen, Defender of the Faith.

To the Sheriff of (here insert name of County or United Counties)—  
Greeting :

We command you that, without delay, you cause to be replevied to (A. B.) his goods, chattels and personal property following, that is to say : (here set out the description of property as in the affidavit filed,) which the said (A. B.) alleges to be of the value of \_\_\_\_\_, and which (C. D.) hath taken and unjustly detains (or unjustly detains, as the case may be), as it is said, in order that the said (A. B.) may have his just remedy in that behalf : And that you summon the said (C. D.) to appear before Us in Our Court of Queen's Bench, (or Court of Common Pleas,) at Toronto, (or Our County Court, at \_\_\_\_\_, in and for the County, or United Counties, as the case may be,) within eight days after service of a copy of this writ upon the said (C. D.) to answer to the said (A. B.) in a plea of taking and unjustly detaining (or unjustly detaining, as the case may be,) his goods, chattels and personal property aforesaid : And what you shall do in the premises, make appear to Us in

Issued from,  
&c.  
(as in other  
writs.)

Our said Court on the day and at the place aforesaid: And have there and then this writ.

Witness \_\_\_\_\_ of our said Court, at \_\_\_\_\_, this  
day of \_\_\_\_\_, A.D. one thousand eight hundred and \_\_\_\_\_.

(Signature of Clerk.)

This writ is to continue in force for three months from the *teste* hereof, and no longer.

C. S. U. C. c. 29, Form A.

## FORM 2.

(Section 11.)

## REPLEVIN BOND.

Know all men by these presents, that we, A. B., (*the plaintiff*) of W. G., of                      and J. S., of                      are jointly and severally held and firmly bound to W. P., Esquire, Sheriff of the County of                      , in the sum of                      of lawful money of Canada, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this                      day of                      , one thousand eight hundred  
and                      .

The condition of this obligation is such, that if the above bounden A. B. do prosecute his suit with effect and without delay against C. D. for the taking and unjustly detaining (or unjustly detaining, *as the case may be*) of his cattle, goods and chattels, to wit : (*here set forth the property distrained, taken or detained*), and do make a return of the said property, if a return thereof shall be adjudged, and also do pay such damages as the Defendant shall sustain by the issuing of the Writ of Replevin if the said A. B. fails to recover judgment in his said suit, and further do observe, keep and perform all rules and orders made by the Court in the said suit, then this obligation shall be void, or else remain in full force and virtue.

Sealed and delivered (   
 in the presence of )

## FORM OF ASSIGNMENT.

Know all men by these presents, that I, W. P., Esquire, Sheriff of the County of \_\_\_\_\_, have at the request of the within named C. D., the avowant (or person making cognizance) in this cause, assigned over this Replevin Bond unto the said C. D., pursuant to the Statute in such case made and provided.

In witness whereof, I have hereunto set my hand and seal of office,  
this                      day of                      , one thousand eight hundred  
and                     

Sealed and delivered }  
in the presence of }

C. S. U. C. c. 29, Form B ; 23 V. c. 45, s. 5.

## FORM 3.

(Section 18.)

## WRIT OF CAPIAS IN WITHERNAM.

County (or  
United Counties) of } VICTORIA, by the Grace of God, &c.  
, to wit : }

To the Sheriff of

GREETING:

Whereas We lately commanded you, that without delay you should cause to be replevied to A. B. his goods, chattels and personal property, to wit, &c. (*setting out the description of the property*), which C. D. had taken and unjustly detained (*or unjustly detained*), as it was said, according to Our writ to you afore directed, and that you should make appear to Us in Our Court of \_\_\_\_\_, at Toronto (*or County Court, as the case may be*), on the \_\_\_\_\_ day of \_\_\_\_\_, what you had done in the premises; and you at that day returned to Us that the goods, chattels and personal property aforesaid were eloigned by the said C. D. out of your County to places to you unknown, so that you could in nowise replevy the same to the said A. B.

Therefore, We command you, that you take in *Withernam* the goods, chattels and personal property of the said C. D. in your County, to the value of the goods, chattels and personal property by him the said C. D. before taken, and deliver them to the said A. B., to be kept by him until the said C. D. delivers the goods, chattels and personal property last aforesaid to the said A. B.; and in what manner you shall have executed this Our writ make appear to Us, on the \_\_\_\_\_ day of \_\_\_\_\_ Term, in our Court of \_\_\_\_\_ (*or County Court, as the case may be*), that We may cause to be further done thereupon what of right and according to the laws of Ontario We shall see meet to be done. We also command you, that if the said A. B. shall make you secure of prosecuting his claims, and of returning the goods, chattels and personal property to be by you taken in *Withernam* as aforesaid, if a return thereof shall be adjudged, then that you put by gages and safe pledges the said C. D. that he be before Us, at the time last aforesaid, to answer to the said A. B. of the taking and unjustly detaining of his goods, chattels and personal property aforesaid; And have there then this writ.

Witness

C. S. U. C. c. 27, Form C.

## CHAPTER 54.

## An Act respecting Interpleading.

Short title, s. 1.

When Interpleader order may be obtained, s. 2.

Trial of issues, ss. 3-9.

Interpleader by Sheriffs, ss. 10-21.

Interpleader in County Courts, ss. 22, 23.

Interpleader in Division Courts, (See Rev. Stat. c. 47, s. 210, p. 524.)

Interpleader by Bailees and Carriers, ss. 24-27.

Common Law Procedure Act to apply, s. 28.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Interpleader Act.*"

Short title.

2. In case, after declaration and before plea, any defendant sued in either of the Superior Courts of Common Law or in any County Court, in any action of assumpsit, debt, detinue or trover, applies to such Court and shows by affidavit or otherwise that he does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject matter of the action, in such manner as the Court (or a Judge having jurisdiction in the case) may order, the Court or Judge may make a rule or order calling upon such third party to appear, and state the nature and particulars of his claim, and to maintain or relinquish the same. C. S. U. C. c. 30, s. 1.

When a party may apply for an interpleader order.

## PROCEDURE FOR TRIAL OF ISSUES.

3. The Court or Judge may, upon such rule or order, hear the allegations as well of such third party as of the plaintiff, and in the meantime stay the proceedings in the action, and may finally order such third party to make himself defendant in the same or in some other action, or to proceed to trial on a feigned issue or feigned issues, and also direct which of the parties shall be plaintiff or defendant on such trial. C. S. U. C. c. 30, s. 2.

Proceedings on the rule or order.



Jury notice in interpleader issues.

Rev. Stat. c. 50, s. 253.

The Court or Judge may finally dispose of the matter.

The Court may review the order of a Judge in Chambers.

The judgment to be conclusive.

If the third party fails to appear or to obey order of the Court, he may be barred his claim, and the Court may make order between the plaintiff and defendant.

The Judge in Chambers may refer the matter to full Court.

In case of claims to goods taken in execution, Court on application of Sheriff may grant interpleader summons and order.

**4.** Notice requiring an issue to be tried by a jury may be filed and served by the plaintiff with the issue, and by the defendant within four days after the delivery of the issue by the plaintiff; the notice may be in the form prescribed by the two hundred and fifty-third section of "*The Common Law Procedure Act*," and a copy thereof shall be annexed to the record. 39 V. c. 7, s. 9.

**5.** The Court or Judge, upon the consent of the plaintiff and such third party, may determine and dispose of the merits of their claims in a summary manner, and make such other rules and orders therein as to costs and all other matters as appear just and reasonable. C. S. U. C. c. 30, s. 3.

**6.** Any such order made by a single Judge not sitting in open Court may be rescinded or altered by the Court in like manner as other orders made by a single Judge. C. S. U. C. c. 30, s. 4.

**7.** The judgment in any such action or issue so directed by the Court or Judge, and the decision of the Court or Judge in a summary manner, shall, in cases in the Superior Courts of Law, be final and conclusive upon the parties, and all persons claiming by, from or under them. C. S. U. C. c. 30, s. 5; See 27 V. c. 14, s. 4.

**8.** In case such third party being duly served with the rule or order does not appear to maintain or relinquish his claim, or neglects or refuses to comply with any rule or order made after appearance, the Court or Judge may declare him, and all persons claiming by, from or under him, for ever barred from prosecuting his claim against the original defendant, his executors or administrators, saving the right or claim of such third party against the plaintiff; and may make such order between the defendant and the plaintiff as to costs and other matters as appears just and reasonable. C. S. U. C. c. 30, s. 6.

**9.** In case of any such application to a Judge, he may, at any stage of the proceedings, refer the matter to the Court, in which event the Court shall hear and dispose thereof in the same manner as if the proceeding had been originally commenced by rule of Court, instead of the order of a Judge. C. S. U. C. c. 30, s. 7.

#### INTERPLEADER BY SHERIFFS.

**10.** In case any claim is made to any goods or chattels, or to any interest in any goods or chattels, taken or intended to be taken under an attachment against an absconding debtor, or in execution under any process issued by or under the authority of any of the said Courts, or to the proceeds or value thereof, or to the proceeds or value of any lands or tenements taken and sold under any such process, by any person, not being the

person against whom such attachment or proceedings or execution issued, or by any landlord for rent, or by any second or subsequent judgment or execution creditor claiming priority over any previous judgment or execution, process or proceeding, then and in every such case, upon the application of the Sheriff (or other officer) to whom the writ is directed, made to the Court from which such writ or proceeding issued, or to any Judge having jurisdiction in the case, and either before or after the return of such process, or before or after any action has been brought against such Sheriff or other officer, such Court or Judge may, by rule or order, call before such Court or Judge as well the party who issued such process as the party making such claim, and may thereupon exercise for the adjustment of such claim, and the relief and protection of the Sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and in case the claimant abandons his claim may order him to pay the Sheriff's costs of the application, and may further require either or both of the parties to give security for the costs of the Sheriff or other officer, relating to such proceedings, and may order the money which forms the subject of the claim to be paid into Court by the Sheriff to await the result of the interpleader issue, and may make such other rules and orders as appear just according to the circumstances of the case. 28 V. c. 19, s. 2; 40 V. c. 7, *Sched. A* (93).

**11.** In case the Sheriff has more than one writ at the suit or instance of different persons against the same property, it shall not be necessary for the Sheriff to make a separate application on each writ, or in each cause; but he may make one application, and may make all the persons who are execution creditors parties to said application, and the Court or Judge before whom the application is made shall take such proceedings, and make such order thereon and therein, as if a separate application had been made upon and in respect of each writ. 36 V. c. 8, s. 41.

In case of several executions, all may be embraced in one application for interpleader.

**12.** In case there are writs from several Courts, including one or more of the Superior Courts, or two or more County Courts, against the same goods, and whether at the suit or instance of the same plaintiff, or of different plaintiffs, the application for such interpleader shall be made to the Superior Court, or to one of said Superior Courts, or to one of the Judges thereof; and such Court or Judge shall dispose of the whole matter, as if all of the writs against the goods had been issued from the said Court; and in such case the County Court or Division Court shall have no cognizance of or jurisdiction whatever in the matter. 36 V. c. 8, s. 42.

Cases of executions from several Courts, to whom application to be made.

**13.** In any such case as in the two next preceding sections mentioned, the Superior Court, or Judge thereof, shall make such order with respect to staying proceedings on the several writs, or with respect to directing a sale of the goods or property in

Orders as to sale, &c., in cases under the two last sections.

question, as may be necessary, and with respect to the final disposition or order to be made as to the goods or the proceeds thereof, and in all other matters whatsoever, as fully as if all the writs had been issued from the said Court. 36 V. c. 8, s. 43.

Costs discretionary.

**14.** The costs of all such proceedings shall be in the discretion of the Court or Judge. C. S. U. C. c. 30, s. 9.

When an issue is ordered, the Sheriff may tax his costs and serve *allocatur* on each party, &c.

**15.** In case an issue is directed to be tried for the determination of the adverse claim in respect of property seized or taken under a writ of attachment or of execution, the Sheriff (or other officer) to whom such writ is directed may tax the costs incurred by him in consequence of such adverse claim, and may, when taxed, serve a copy of the *allocatur* of the same upon each of the parties to such issue, and the successful party upon the issue shall tax such costs among his costs of the cause, and upon receipt thereof shall pay over the same to such Sheriff or other officer. C. S. U. C. c. 30, s. 10.

The successful party liable to the Sheriff for such costs.

**16.** If after the service of such *allocatur* the party succeeding upon the issue neglects or refuses to tax such costs, the Sheriff or other officer may obtain a rule upon the successful party for payment of the same. C. S. U. C. c. 30, s. 11.

If case compromised, who to be liable to the Sheriff for his costs.

**17.** In case of any such proceeding being compromised between the parties thereto, such costs of the Sheriff or other officer shall be paid by the party, plaintiff or defendant, by whom the execution or attachment was sued out. C. S. U. C. c. 30, s. 12.

If goods seized remain in the Sheriff's custody, the Court may award remuneration.

**18.** In case, after the seizure of any property under attachment or in execution, an issue is directed, and the property seized remains, pending the trial of the issue, in the custody of the Sheriff or other officer who seized the same, the Court from which the writ issued, or any Judge thereof in Vacation, may make an order for the payment to the Sheriff or other officer of such sum for his trouble in and about the custody of the property as the Court or Judge deems reasonable; and the Sheriff or other officer shall have a lien upon the property for payment of the same. C. S. U. C. c. 30, s. 13.

All proceedings may be entered of record, &c.

**19.** All rules, orders, matters and decisions made or done in pursuance of this Act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry; and every such rule or order so entered shall have the force and effect of a judgment. C. S. U. C. c. 30, s. 14.

**20.** In case the costs adjudged be not paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, or to his agent or attorney, execution may issue therefor by writ of *fiери facias* tested and bearing date in like manner as other writs of *fiери facias*, and adapted to the case, together with the costs of the entry aforesaid and of the execution. C. S. U. C. c. 30, s. 15.

If costs not paid on demand, execution to issue.

**21.** The Sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon similar writs grounded upon a judgment of the Court. C. S. U. C. c. 30, s. 16.

The Sheriff's fees the same as in other cases.

#### INTERPLEADER IN COUNTY COURTS.

**22.** In case any claim is made to any goods or chattels taken or intended to be taken under an attachment against an absconding debtor or in execution, under any process issued out of any County Court, or to the proceeds or value thereof, as mentioned in section ten of this Act, all the proceedings mentioned and provided for in this Act shall be had and taken in the County Court of the County or Union of Counties in which such goods or chattels are so taken or intended to be taken, or before the Judge of such Court; or the said Court or Judge in any such case, if, upon the return of the rule or order mentioned in this Act, it appears more convenient and more conducive to the ends of justice so to do, may order that the said proceedings be had and taken in the County Court from which such process issued, or before the Judge of such Court. 27 V. c. 14, s. 3.

In what County Court the proceedings in interpleader shall be had.

**23.** Any party to any cause or proceeding before any County Court or County Judge under this Act, who is dissatisfied with the decision of such Court or Judge upon any question of law or fact arising in the course of such proceeding, may appeal from such decision to the Court of Appeal, and the thirty-fourth to forty-second sections inclusive of "*The County Courts Act*" shall extend and apply to and shall regulate and govern the manner of prosecuting and determining such appeal. 27 V. c. 14, s. 4; 37 V. c. 7, s. 6.

Appeal given to parties dissatisfied in interpleader cases in County Courts.  
Rev. Stat. c. 43, ss. 34-42.

#### INTERPLEADER IN DIVISION COURTS.

(For the procedure in cases in Division Courts, see Rev. Stat. c. 47, s. 210, p. 524.)

#### INTERPLEADER BY BAILEES AND CARRIERS.

**24.** Any common carrier or other bailee of goods and chattels, whether under a special contract or otherwise howsoever, upon whom any claim is made to any goods or chattels in the possession of such carrier or bailee by any one or more claim-

Bailee or carrier may interplead on certain affidavit.



ants, whether such claims have or have not a common origin, may apply either before or at any time after action is brought by any such claimants respecting the said goods, upon affidavit showing how the said goods and chattels came to his possession, the nature and extent of any lien which the said carrier or bailee has upon the said goods and chattels for services rendered and money advanced thereon, if any such claim exists, and the value or supposed value thereof, also showing who said claimants respectively are, and the nature (as far as said carrier or bailee knows) of the claims respectively made to said goods, and that he the said carrier or bailee has good reason to believe, and does believe, that if he delivers such goods to either of the claimants he will be sued by the other or others of them, and that he does not collude with any or either of the parties claiming possession of said goods and chattels, may apply to any Judge of the Court of Queen's Bench or Common Pleas, or, where the value of the goods does not exceed two hundred dollars, to any Judge of a County Court of the County within which such goods are at the time of the application, for an order calling upon all the parties respectively claiming the said goods and chattels, to appear and state the nature and particulars of their respective claims, and to maintain or relinquish the same.

2. The Judge in disposing of said application, shall have and exercise all the powers given by this Act to a Judge in interpleader matters. 33 V. c. 17, s. 1.

When and how claimant served may be barred.

**25.** In case any such claimant, being duly served with the said order, does not appear to maintain or relinquish his claim or right, or refuses to comply with any order made after appearance, the said Judge may declare him barred from making or prosecuting his claim against the said carrier or bailee, saving the right or claim of such party against the person or party to whom, under said order, said goods, or the proceeds thereof, may be delivered; and the said Judge may make such order between the parties to the said application as may seem just. 33 V. c. 17, s. 2.

The Court may provide for satisfaction of lien of bailee.

**26.** It shall not be necessary, in order to entitle any such carrier or bailee to relief by way of interpleader, that he should abandon any lawful lien he may have upon the goods and chattels the subject of such application; and in disposing of said application, the Judge, in case of any such lien, may make such order respecting the satisfaction or payment thereof, and as to the relief asked and sought thereby, and as to the costs of the parties and the payment thereof, as the right and justice of the case may require. 33 V. c. 17, s. 3.

Sections made applicable.

**27.** The several clauses of this Act, as to ordering of feigned issues, and directing who shall be plaintiff and who defendant therein, the place and mode of trial, the effect of

judgment on any such issue, and otherwise, not inconsistent with the three preceding sections, shall apply to proceedings had or taken thereunder. 33 V. c. 17, s. 4.

#### COMMON LAW PROCEDURE ACT TO APPLY.

**28.** So far as applicable, the provisions of "*The Common Law Procedure Act*" shall apply to this Act. C. S. U. C. c. 30, s. 17. Rev. Stat. c. 50 to apply.

## CHAPTER 55.

### An Act respecting the Procedure in Actions of Dower.

Short title, s. 1.	Dower and Dower <i>unde nihil habet</i> , ss. 7-44 :
When action not maintainable, s. 2.	Writ, issue, service of, &c., ss. 7-17.
Procedure for assignment of Dower without action, ss. 3-4.	Appearance, ss. 18-22.
Assignment by consent, s. 5.	Pleadings. &c., ss. 23-27.
Procedure in actions of right of	Damages, Costs, &c., ss. 28, 29.
	Assignment of Dower, ss. 30-44.
	Cases not within the Act, s. 45.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

**1.** This Act may be cited as "*The Dower Procedure Act*." Short title.

#### WHEN ACTION NOT TO LIE.

**2.** No action of dower shall be hereafter maintained, in case the doweress has joined in a deed to convey the land or to release her dower therein to a purchaser for value, although the acknowledgment required by law at the time may not have been made or taken, or though any informality may have occurred or happened in the making, taking or certifying such acknowledgment. 32 V. c. 7, s. 23. Case where action not maintainable.

#### ASSIGNMENT OF DOWER BY CONSENT.

**3.** The tenant of the freehold may at any time before action commenced serve upon a doweress a notice in writing that he is willing to assign her dower in the land (describing it) out of Tenant may notify doweress of desire to assign her dower;

procedure  
thereon.

which she is entitled to dower, and may thereafter apply to one of the Superior Courts, or to a Judge thereof, for a rule or order directing that a writ shall issue for the assignment of dower; and a writ therefor may thereupon issue, and the like proceedings may be had thereon as upon a writ sued out after judgment in an action. 37 V. c. 7, s. 43.

Order as to  
costs.

4. The Court or Judge granting a rule or order under the preceding section may make such order as to the costs of the proceedings as appears just. 37 V. c. 7, s. 44.

Doweress  
and tenant  
may agree up-  
on assignment,  
etc.

5. The doweress and the tenant of the freehold may, by any instrument under their respective hands and seals, executed in the presence of two credible witnesses, agree upon the assignment of dower, or upon a yearly sum, or a gross sum to be paid in lieu and satisfaction of dower, and a duplicate of such instrument, proved by the oath of one of the subscribing witnesses, which oath any Commissioner duly appointed for taking affidavits may administer, shall be registered in the Registry Office of the Registration Division in which the lands lie, and shall entitle the doweress to hold the land so assigned to her, against the assignor and all parties claiming through or under him, as tenant for her life, or to distrain for, or to sue for, and recover in any Court having jurisdiction to the amount, the annual or other sum agreed to be paid to her by such tenant of the freehold, and such instrument so registered shall be a lien upon the land for such yearly or other sum, and shall be a bar to any action, suit or proceeding by the doweress for dower in the lands mentioned therein. 32 V. c. 7, s. 41.

#### PROCEDURE IN ACTIONS OF DOWER.

Actions of  
dower govern-  
ed by this Act.

6. All actions of right of dower or of dower *unde nihil habet* shall be brought and carried on according to the provisions of this Act. 32 V. c. 7, s. 2.

#### *The Writ, Service thereof, &c.*

Action to be  
commenced  
by summons  
to party in  
possession.

7. Every action for dower shall be commenced by writ of summons, which shall be addressed to the person in actual possession of the land out of which dower is claimed, and to every other person who is tenant of the freehold of the same land, and in every such writ, and in every copy thereof, the name, place and County of the residence, and abode of each party defendant shall be mentioned, and the land or property out of which dower is claimed shall be described by the number of the lot or otherwise, with reasonable certainty, and such writ shall be tested as in personal actions, and may be according to the form following:—

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To \_\_\_\_\_ of \_\_\_\_\_ (naming each defendant, and the place and County of the residence and abode of each defendant.)

We command you (or each and every of you) that you render to \_\_\_\_\_, who was the wife of \_\_\_\_\_, now deceased, her reasonable dower which falleth to her of the freehold which was of the said \_\_\_\_\_, her late husband, of and in (describe the land and property by the number of the lot, or the part of the lot, concession, name of the Township, City, Town or place, or with such other reasonable certainty as will show out of what land and property dower is claimed), and whereof she complains that you do force her, or that you appear within sixteen days either to disclaim any right or estate of freehold in the said land and property, or to defend yourself against her claim.

Witness, &c.

32 V. c. 7, s. 4.

8. Every such writ shall bear date on the day on which it is issued, and shall be issued out of the proper office, in the County wherein the lands lie, and shall be in force for six months, and shall be returnable on the sixteenth day after service thereof, and shall be endorsed with the name and place of abode of the attorney suing out the same, or (if no attorney) the name and residence of the plaintiff shall be endorsed thereon in like manner as the endorsements on writs of summons in personal actions; and the same proceedings may be had to ascertain whether the writ was issued by the authority of the attorney whose name appears endorsed thereon, and who the plaintiff is and her abode, and as to the staying proceedings upon writs issued without authority, as in personal actions. 32 V. c. 7, s. 5.

Date of writ, whence issuable and when returnable.

9. On every such writ and on each copy thereof shall be endorsed a notice addressed to the defendants, which may be to the effect following:—

Notice endorsed thereon.

“You are served with this writ to the intent that you may enter an appearance and denial that you are tenant of the freehold of the lands mentioned in this writ, or that you may enter only an appearance; and take notice that unless within sixteen days of the service hereof you enter an appearance with or without such denial, the plaintiff will have a right to sign judgment to recover as against you the dower claimed with costs of suits.”

32 V. c. 7, s. 6.

10. In case the plaintiff claims damages for detention of her dower, such notice shall contain a further statement that the plaintiff claims damages for the detention of her dower from some day to be stated in the notice. 32 V. c. 7, s. 7.

Where plaintiff claims damages for detention, etc.

11. The writ of summons may be served in Ontario, and the service shall be personal wherever that is practicable, but the plaintiff may, on affidavit, apply from time to time, either

Writ to be served personally except in certain cases.



to the Court out of which the writ issued or to a Judge of either Court in Chambers, and, if it appears to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the writ has come to the knowledge of defendant, or that he wilfully evaded service of the same, and has not appeared thereto, such Court or Judge may, by rule or order, grant leave to the plaintiff to proceed as if personal service had been effected, subject, however to such conditions as to the Court or Judge seem fit. 32 V. c. 7, s. 13.

If no person in actual occupation how writ served.

**12.** If no person is in actual occupation of the lands of which the plaintiff claims dower, the writ shall nevertheless be served on the tenant of the freehold, named therein. 32 V. c. 7, s. 12.

Tenant in possession, not also tenant of freehold, to notify landlord.

**13.** Every tenant in possession, who is not also tenant of the freehold, and who is served with a writ under this Act, shall forthwith give notice thereof to his landlord or other person under whom he entered into possession, under the penalty of forfeiting the value of three years' improved rent of the premises in the possession of such tenant, to the person under whom he entered into possession, to be recovered by action of debt to be brought in either of the Superior Courts of Common Law in Ontario 32 V. c. 7, s. 10.

Penalty.

Landlord may apply to Court to be substituted as defendant.

**14.** The landlord or other person under whom such tenant as is mentioned in the next preceding section, holds or entered into possession, may, if he has not been served with the writ of dower, apply to the Court or a Judge upon affidavit, that he is tenant of the freehold, and is advised and believes that there is good ground for disputing the plaintiff's claim to dower, and the Court or Judge may, after summons to or rule upon, the plaintiff, order that such applicant be substituted as defendant in the action, in lieu of the tenant in possession, upon such conditions as to the Court or Judge appear just. 32 V. c. 7, s. 11.

Non-appearance in dower. Judgment of seisin. Execution. Costs.

**15.** In case of non-appearance by the defendant if the plaintiff files the writ and an affidavit of personal service thereof, or a rule of Court or Judge's order for leave to proceed as if personal service had been effected, the plaintiff may enter judgment of seisin forthwith, and sue out a writ of assignment of dower, but she shall not be entitled to tax or recover the costs of suit or of entering such judgment against the defendant, unless the Court or a Judge so orders. 37 V. c. 7, s. 41.

How writ served where tenant resides out of Ontario,

**16.** In all cases where the tenant of the freehold resides out of Ontario, the plaintiff may issue a writ of summons in the form above set forth, but giving a sufficient number of days, not less in any case than twenty-one, for the defendant to appear, according to the distance of the place of the defendant's residence,

and having due regard to the means of and reasonable time for postal or other communication; which writ of summons shall bear the same endorsement and notice or notices as the writ of summons hereinbefore set forth, making such changes as the nature of the case renders indispensable. 32 V. c. 7, s. 14.

**17.** Upon the Court or Judge being satisfied that such writ has been personally served upon the defendant, or that reasonable efforts have been made to effect personal service thereof on the defendant so resident out of Ontario, and that it came to his knowledge, and that he has not appeared, such Court or Judge may from time to time direct that the plaintiff may proceed in the action in like manner as if the defendant had been served under this Act in Ontario, subject to such conditions as to such Court or Judge seem fit, having regard to the time allowed to the defendant to appear being reasonable, and to the other circumstances of the case. 32 V. c. 7, s. 15.

Proceedings where writ served or reasonable efforts to serve defendant have failed, etc.

#### *Appearance.*

**18.** Any defendant named in the writ may appear within the time appointed, and, with the appearance, may file a notice addressed to the plaintiff, setting out that he denies that he is tenant of the freehold of the lands mentioned in the writ, which denial shall, as against that individual defendant, be taken to admit the claim of the plaintiff to dower as stated in the writ. 32 V. c. 7, s. 8.

Defendant may appear, and deny tenancy, etc.

**19.** Any defendant named in the writ may appear within the time appointed, and by filing an appearance without such denial, shall be taken to admit that he is tenant of the freehold, and shall not afterwards be allowed to deny the same. 32 V. c. 7, s. 9.

Effect of appearance without denial.

**20.** Any defendant named in the writ may, within the time appointed, file an appearance and acknowledgment that he is tenant of the freehold of the land named in the writ, together with his consent that the plaintiff may have judgment for her dower therein, and may take the proceedings authorized by this Act to have the same assigned to her, unless the parties otherwise agree, and he shall forthwith serve the plaintiff or her attorney with a copy of such appearance, acknowledgment and consent, together with an affidavit of the day of the entering and filing the same in the proper office; and in every such case when the defendant so admits the right to recover, the plaintiff may enter judgment of seisin forthwith, and may obtain a writ of assignment of dower in manner hereinafter specified, but shall not be entitled to tax or recover the costs of suit or of entering such judgment against the defendant. 32 V. c. 7, s. 16.

Defendant may file appearance and acknowledge tenancy.

Judgment of seisin and writ of assignment thereon.

Case wherein defendant may sue out execution, if plaintiff does not.

**21.** In case the defendant has filed and served an acknowledgment and consent under the preceding section, and the plaintiff does not within three months thereafter sue out and cause to be executed a writ of assignment of dower, the defendant may, by leave of the Court or a Judge, sue out such writ; and the writ shall be, as nearly as may be, in the same form as a writ sued out by the plaintiff, and the like proceedings shall be had thereon. 37 V. c. 7, s. 42.

Order as to costs.

**22.** The Court or Judge granting a rule or order under the preceding section may make such order as to the costs of the proceedings as appears just. 37 V. c. 7, s. 44.

### *Pleadings, etc.*

Proceedings when appearance and denial filed.

**23.** In case an appearance is entered with a denial by the defendant that he is tenant of the freehold, the plaintiff may at once, and without further pleadings, take issue on that denial and make up a record of the issue setting out the writ, the appearance and denial and the issue thereon, and may give notice of trial and proceed to trial as in personal actions; and if she obtains a verdict she shall be entitled to costs and to enter judgment of seisin of her dower, as against such defendant. 32 V. c. 7, s. 17.

Proceedings if only appearance entered

**24.** In case only an appearance is entered, the plaintiff may at once declare, and when damages are claimed in the writ, they may also be claimed in the declaration. 32 V. c. 7, s. 18.

Form of declaration.

**25.** The declaration may be in the form or to the effect following:

In the	(the style of the Court).
County of            {	The                   day of                   18   .
To wit:            }	

A. B., widow (*as the case may be*), who was the wife of C. B., deceased, by her attorney, demands against (*the defendant*) the third part of (*the land and premises as described in the writ*), with the appurtenances in the (*Township, &c.*) of                   , in the said County of                   , as the dower of the said A. B. of the endowment of C. B., deceased, heretofore her husband, whereof she has nothing; (*and if damages are claimed*) and she also claims damages for the detention from her of her endowment in the said lands from the           day of           , 18   ; and she claims \$   .

32 V. c. 7, s. 18.

To what extent Rev. Stat. c. 50, shall apply.

**26.** The several enactments in "*The Common Law Procedure Act*" relative to pleas, demurrers, replications and subsequent pleadings, and the periods appointed within which the same must be pleaded, and in which notice of trial must be given and countermanded, and as to amending pleadings, and as to practice not herein provided for, and making all or any other amendments, and as to the authority of the Court or of a Judge

in such matters, and also the Rules of Court, from time to time in force relative to pleading and practice, shall, so far as they can be made applicable, and are not at variance with this Act, be in force, and apply to and regulate the course and practice of pleading and procedure in actions of dower. 32 V. c. 7, s. 19.

**27.** Special cases may be stated by leave of the Court or a Judge in like manner as in other actions. 32 V. c. 7, s. 20.

### *Damages, Costs.*

**28.** In estimating damages for the detention of dower or the yearly value of the lands, for the purpose of fixing a yearly sum of money in lieu of an assignment of dower by metes and bounds, the value of permanent improvements made after the alienation of the lands by the husband, or after the death of the husband, shall not be taken into account; but such damages or yearly value shall be estimated upon the state of the property at the time of such alienation or death, allowing for the general rise, if any, in the price and value of land in the particular locality. 32 V. c. 7, s. 21.

Mode of estimating damages for detention of dower, etc.

**29.** Unless where it is in this Act expressly declared to the contrary, costs shall be taxed and allowed to and be recoverable by either party in an action of dower, in like manner as in personal actions, and writs of execution to levy the same with damages, where damages have been adjudged, may be sued out and executed as in personal actions. 32 V. c. 7, s. 25.

When costs recoverable.

### *Assignment of Dower.*

**30.** After judgment has been rendered in the plaintiff's favour to recover dower, whether with or without costs or damages, she shall be entitled to sue out a writ of assignment of dower, founded upon such judgment, directed to the Sheriff of the County in which the lands lie, in which writ shall be set forth the lands out of which the plaintiff has recovered judgment to recover her dower. 32 V. c. 7, s. 26.

Effect of judgment for plaintiff.

**31.** The Sheriff, on receipt of such writ, shall, by writing under his seal of office, appoint two resident freeholders of his County who are rated upon the assessment roll for real estate of a value not less than two thousand dollars each, and a licensed Provincial Land Surveyor, and each of whom would in other respects be eligible to serve as a juror between the parties named in the said writ, to be Commissioners to admeasure the dower, and the Sheriff shall, in such writing, set out a copy of the writ of assignment, and shall name therein a day on or before which the Commissioners shall make and return to him a report of their proceedings and determination in the execution of the duty assigned to them. 32 V. c. 7, s. 27.

Sheriff to appoint Commissioners to admeasure the dower, etc.



Provision in case of death, etc., of Commissioners.

**32.** In case of the death of, or refusal by, any or all of the Commissioners so appointed, the Sheriff shall, from time to time, in like manner, appoint another or others to perform the duty of such as die or refuse. 32 V. c. 7, s. 28.

Oath of Commissioners.

**33.** Every Commissioner so appointed shall, before entering upon the execution of his duty, take and subscribe an affidavit in the form or to the effect following, which oath any person duly authorized and appointed to take affidavits in the Superior Courts of Common Law, is hereby empowered to administer; and the said Commissioners shall annex to their report the affidavits sworn by them, and return them to the Sheriff:

Form of oath. "I, \_\_\_\_\_, do swear that I am not of kin to the plaintiff (*naming her*) or to the defendants (*naming him or them*), or "in any way interested in the lands out of which the assignment of dower "is to be made by me, and that I will honestly, impartially, and to the "best of my skill and ability, execute and perform the duties imposed "upon me by the appointment of \_\_\_\_\_ Esquire, Sheriff of "the County of \_\_\_\_\_, as a Commissioner for the admea- "surement of dower between the said plaintiff and the said defendants "according to law."

32 V. c. 7, s. 29.

Commissioners when sworn to be officers of the Court.

**34.** After taking and subscribing such affidavit, the Commissioners and each of them shall, for all purposes in the fulfilment of the duties by law required of them, be considered as officers of the Court out of which the writ of assignment issued, and shall be entitled to the same immunities and protection and be subject to the same liabilities and proceedings as a Sheriff, in the discharge of his duty. 32 V. c. 7, s. 30.

Their duties.

**35.** It shall be the duty of the Commissioners:

To admeasure dower by bounds, etc.;

1. To admeasure, designate and lay off without delay, by sufficient marks, descriptions, boundaries or monuments, one-third of the lands and premises mentioned in the writ of assignment, according to the nature of the land, whether meadow, arable, pasture or woodland, being a part of the lot or parcel of land and premises mentioned in the writ, and having always due regard to the nature and character of the buildings and erections on such lands and premises;

ascertain improvements, etc.;

2. To ascertain and determine what permanent improvements have been made upon such lands and premises since the death of the plaintiff's husband, or since the time her said husband alienated the same to a purchaser for value, and if it can be done they shall award the dower out of such part of the lands as do not embrace or contain such permanent improvements; but if that cannot be done, they shall deduct either in quantity or value from the portion to be by them allotted, or assigned to the plaintiff in proportion to the benefit she may or will derive from the assignment to her as part of her dower of any part of such permanent improvements;

3. If, from peculiar circumstances, such as there being a mill or mills or manufactory upon the land, the Commissioners cannot make a fair and just assignment of dower by metes and bounds, they shall assess a yearly sum of money, being as near as may be one-third of the clear yearly rents of the premises, after deducting any rates or assessments payable thereon, and in assessing such yearly sum they shall make allowances and deductions for permanent improvements, as above provided for, and in their report to the Sheriff they shall state the amount of such yearly sum and set forth all the evidence taken by them in relation to the same, such evidence to be reduced to writing and taken upon oath (which any one of the Commissioners is hereby authorized to administer), and to be subscribed by the witness examined; and, where they cannot assign bounds, etc., to assess a yearly sum.

Evidence to be on oath.

4. Such yearly sum shall be a lien upon the lands mentioned in the writ of assignment, unless the Commissioners specially direct otherwise, and make the same issuable and payable out of some specific portion of such lands, and the same shall be recoverable by distress as for rent or by action of debt against the tenant of the freehold for the time being; Such sum to be a lien on lands, unless otherwise directed.

5. The report of the Commissioners shall be in writing, subscribed by them and directed to the Sheriff, and shall contain a full statement of their proceedings, and where the dower is assigned by metes and bounds, shall distinctly point out and describe the same, and the posts, stones or other monuments designating the boundaries, and for the purpose of planting and marking such posts, stones or monuments, they may, if necessary, employ chain-bearers and labourers. 32 V. c. 7, s. 31. Report of Commissioners.

36. The Sheriff may, in his discretion, upon the request of the Commissioners, enlarge the time for making their report, for not more than ten days, and he shall, within twenty-four hours after the receipt thereof, endorse thereon the day and hour of such receipt, and he shall then forthwith return the writ of admeasurement of dower, together with the report and all papers annexed thereto, to the office wherein the suit was commenced and carried on, and the Deputy Clerk of the Crown, into whose office such writ and other papers have been returned, shall, on the application of either party, transmit the same to the proper principal office in Toronto, in like manner and on the same conditions as he is required to transmit any record of Nisi Prius, and subject to the same liabilities in case of his default. 32 V. c. 7, s. 32. Sheriff may enlarge time for report.

Report to be returned to Deputy Clerk of Crown.

37. Either party may, after the expiration of ten days from the filing of the Sheriff's return to the writ of assignment, provided such ten days have elapsed before the first day of the Term next after such filing, and if not, then within the first four days of the succeeding Term, apply for, and the Court may grant, a rule calling upon the opposite party to show cause why Either party may apply to set aside report.

Order of Court  
thereon.

the Commissioners' report should not be set aside upon grounds apparent on the report and papers filed therewith, and upon such other grounds as the Court may see fit, the same being supported by affidavit, and every such ground being set forth in the rule; and the Court after hearing the parties may order the report to be varied or amended, if in their judgment they have sufficient matter before them to amend by, or may annul and set aside the report and may appoint three new Commissioners or direct that the Sheriff shall do so, and such new Commissioners shall have the same powers and execute the same duties and be subject to the same conditions and responsibilities as are in that behalf hereinbefore expressed, and the report of such new Commissioners shall be treated as if no other report had been previously made, and shall be dealt with and proceeded upon accordingly. 32 V. c. 7, s. 33.

Effect of report being moved against for misconduct, etc.

**38.** If the report is moved against upon the ground of any misconduct or fraud on the part of the Commissioners, the Court may, in its discretion, make them parties to the rule, and if wilful misconduct or fraud be established in the opinion of the Court, the report may be set aside and the Commissioners be adjudged to pay to the parties injured all the costs which have been incurred and have been rendered useless by such misconduct or fraud, and all the costs of the rule to set aside the report; and such payment may be enforced by the like process and proceedings as are or may be in use to compel a Sheriff to pay costs of any rule or summary proceeding against him. 32 V. c. 7, s. 34.

Costs of rule.

**39.** The rule to set aside the report may be discharged with or without costs, and the Court may order the party at whose instance, or on whose complaint or representation, the Commissioners may have been made parties to the rule, to pay such Commissioners their costs of answering the same; and if the rule is discharged, or if the report is not moved against within the proper time, or if the Court refuses to grant a rule to show cause, the report shall thenceforth be final and conclusive on all parties to the action of dower, and a copy of such report, certified by the Clerk of the Crown under the seal of the Court, shall be registered in the Registry Office of the Registration Division in which the lands lie, for which service the Registrar shall be entitled to receive one dollar. 32 V. c. 7, s. 35.

Copy of report when final to be registered.

Plaintiff may then sue out writ of possession.

**40.** After such registration the plaintiff shall be entitled to sue out a writ directed to the proper Sheriff, commanding him to put her into possession of the lands and premises assigned and admeasured to her for her dower, and to levy all such costs as by the judgment and any rule of Court, or either, have been awarded to her against the defendant. 32 V. c. 7, s. 36.

**41.** In case judgment is given against the plaintiff and costs are awarded to be paid by her to the defendant by such judgment, or by any rule of Court, such defendant may issue a writ of *fiery facias* to recover the same. 32 V. c. 7, s. 37. If judgment against plaintiff, defendant may issue *fi. fa.*

**42.** In case it is desired by either party to produce any witnesses before the Commissioners, such party may, on application to the Court out of which the writ of assignment issued, or to any Judge of either of the Superior Courts of Common Law, on affidavit that the evidence of any such witness is necessary, obtain an order commanding the attendance of any such witness before the said Commissioners, and if, in addition to the service of such order, an appointment of time and place of attendance in obedience thereto, signed by one of the Commissioners, be served on the person whose evidence is required, either with or after the service of the order, non-attendance shall be deemed a contempt of Court, and shall be punishable accordingly. Mode of procuring attendance of witnesses before Commissioners.

**2.** The person so required to attend shall be entitled to be paid the same fees, allowance and conduct money as if he had been subpoenaed as a witness in an ordinary suit, but no witness shall be obliged to attend more than two consecutive days. 32 V. c. 7, s. 38.

**43.** The Commissioners shall be entitled to receive from the plaintiff the sum of four dollars for each day's attendance, not, however, to exceed two, and may also charge at the rate of twenty cents for every hundred words for drawing up their report, and ten cents for every hundred words of each copy furnished by them to either party. 32 V. c. 7, s. 39. Commissioners' fees.

**44.** The plaintiff shall pay the costs of suing out, and the costs of the Commissioners in executing the writ of assignment of dower, and making the report thereof, but each party shall pay his own costs of witnesses, or of attorney or counsel attending before the said Commissioners. 32 V. c. 7, s. 40. By whom costs to be paid.

*Cases not within the Act.*

**45.** In all cases not otherwise provided for by this Act, the pleadings and proceedings shall be regulated by the law as it was in force in Upper Canada relative to suits and actions of dower, before the tenth day of August, in the year of our Lord one thousand eight hundred and fifty. 32 V. c. 7, s. 43. Mode of proceeding where not prescribed by this Act.



## CHAPTER. 56.

## An Act respecting Actions of Libel and Slander.

Whether a publication amounts to a libel, a question for the jury, s. 1.	Plea of publication without malice or gross negligence with an apology, s. 4.
Averments in actions for libel or slander, s. 2.	Payment into Court by way of amends, s. 5.
Apology may be shewn in mitigation of damages, s. 3.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Jury not to be directed to return a verdict of guilty on the mere proof of the publication and of the sense ascribed.

1. On the trial of any action for the making or publishing any libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue in such action, and shall not be required or directed by the Court or Judge before whom such action is tried, to find the defendant guilty, merely on the proof of publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such action; but the Court or Judge before whom such trial is had shall, according to the discretion of such Court or Judge, give the opinion and directions of such Court or Judge to the jury on the matter in issue, as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as he might have done before the passing of this Act. C. S. U. C. c. 103, s. 1.

Averments in actions for slander or libel.

2. In actions of libel and slander, the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient. C. S. U. C. c. 103, s. 2.

Defendant may prove in mitigation that he offered a written apology.

3. In any action for defamation where the defendant has pleaded not guilty only, or has suffered judgment by default, or judgment has been given against him on demurrer, he may give in evidence, in mitigation of damages, that he made or

offered a written or printed apology to the plaintiff for such defamation before the commencement of the action; or in case the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. C. S. U. C. c. 103, s. 3.

4 In an action for libel contained in any public newspaper or other periodical publication, the defendant may plead that such libel was inserted in such newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel; or if the newspaper or periodical publication in which the said libel appeared be one ordinarily published at intervals exceeding one week, that he offered to publish such apology in any newspaper or periodical publication to be selected by the plaintiff in the action. C. S. U. C. c. 103, s. 4.

Defendant may plead that the libel was inserted without malice or gross negligence, and that he published or offered to publish an apology.

5 Any defendant, upon filing such plea, may pay into Court a sum of money by way of amends for the injury sustained by the publication of the libel, and such payment shall be of the same effect, and available to the same extent and in the same manner, and be subject to the same rules and regulations as to costs, and the form of pleading (except so far as regards the additional facts hereinbefore required to be pleaded by such defendant), as payment of money into Court in other cases; and to such plea the plaintiff may reply generally, denying the whole of the plea. C. S. U. C. c. 103, s. 5.

And may pay money into Court as amends.

## CHAPTER. 57.

### An Act respecting the Action of Seduction.

When maintainable by father or mother, s. 1.

Proof of service dispensed with, s. 2.

By whom maintainable if parents absent, s. 3.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### SEDUCTION.

1 The father or, in case of his death, the mother of any unmarried female who has been seduced, and for whose seduction

Action when maintainable

by father or mother.

the father or mother could maintain an action in case such unmarried female were at the time dwelling under his or her protection, may maintain an action for the seduction, notwithstanding such unmarried female was, at the time of her seduction, serving or residing with another person, upon hire or otherwise. C. S. U. C. c. 77, s. 1.

Proof of service dispensed with.

2. Upon the trial of any action for seduction brought by the father or mother, it shall not be necessary to give proof of any act of service performed by the person seduced, but the same shall in all cases be presumed, and no proof shall be received to the contrary; but in case the father or mother of the female seduced had, before the seduction, abandoned her, and refused to provide for and retain her as an inmate, then any other person who might at Common Law have maintained an action for such seduction may maintain such action. C. S. U. C. c. 77, s. 2.

When action maintainable by relatives or masters.

3. Any person, other than the father or mother, who by reason of the relation of master, or otherwise, would have been entitled at Common Law to maintain an action for the seduction of an unmarried female, may still maintain such action, if the father or mother be not resident in Ontario at the time of the birth of the child which may be born in consequence of such seduction, or being resident therein does not bring an action for the seduction within six months from the birth of such child. C. S. U. C. c. 77, s. 3.

By whom maintainable if parents absent.

3. Any person, other than the father or mother, who by reason of the relation of master, or otherwise, would have been entitled at Common Law to maintain an action for the seduction of an unmarried female, may still maintain such action, if the father or mother be not resident in Ontario at the time of the birth of the child which may be born in consequence of such seduction, or being resident therein does not bring an action for the seduction within six months from the birth of such child. C. S. U. C. c. 77, s. 3.

## CHAPTER 58.

An Act respecting the Practice in Suits and Proceedings instituted on behalf of the Crown.

Commissions extents, &c., *teste* and return of, ss. 1-4.  
Proceedings in case of claims to goods taken under extent, s. 5.

Procedure in Crown suits, ss. 6-8.  
Costs in Revenue cases, 9, 10.  
*Scire Facias* to repeal Letters Patent, ss. 11-13.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

### COMMISSIONS, EXTENTS, &C.

Commissions, extents, etc., may be issued

1. Every commission, extent, writ or other process issued from either of the Superior Courts of Common Law by or on

behalf of the Crown, may be tested, made returnable and be returned on any day certain in Term or Vacation to be named in such commission, extent, writ or other process. C. S. U. C. c. 21, s. 1.

2. At the return of any such commission, extent, writ or other process, the like rules may be given, and such other proceedings had, and such subsequent writs and process issued at any time in Vacation, as may be given, had or issued in Term time. C. S. U. C. c. 21, s. 2.

3. Every commission, extent, writ or other process, rule and proceeding, issued or had in Vacation, shall be as valid and effectual as if the same had been issued or had in Term. U. C. c. 21, s. 3.

4. Nothing herein contained shall extend to alter the time for filing any pleadings. C. S. U. C. c. 21, s. 4.

5. In case a person enters a claim to any goods seized under any extent, or returned as forfeited (which he may do in Vacation), the further proceedings shall be according to the ordinary practice of the Court of Exchequer in England on the fifth day of December, 1859. C. S. U. C. c. 21, s. 5.

#### CROWN SUITS.

6. The procedure and forms which are from time to time, in force for the prosecution of rights, claims or demands, or for the recovery of the possession of any lands, deeds or personal property between subject and subject, may be used in the like cases for the prosecution of rights, claims or demands which Her Majesty may have against any person or persons, body or bodies corporate, or for the recovery of the possession of any lands, deeds or personal property whereto Her Majesty claims to be entitled. 35 V. c. 13, s. 18.

7. In any action, suit or proceeding commenced under the provisions of the next preceding section, the defendant shall be entitled to require Her Majesty's Attorney-General to declare, reply, or otherwise answer the last pleading of the defendant, and to proceed to trial in the same manner and within the same times as may be limited as between subject and subject, and may, in the event of default, by leave of the Court or a Judge, sign judgment of *non pros*. 35 V. c. 13, s. 19.

8. On all trials to which the Crown is a party, either directly or through the Attorney General, the addresses of counsel or of parties to the jury, the examination and contradiction of witnesses, comparison of hand writing and the calling of attesting witnesses shall proceed in the same manner, and with the same effect as is provided by law in ordinary civil cases ;



but the right of reply shall be always allowed to the Attorney-General, and to any Queen's Counsel having written authority from him for that purpose. 29-30 V. c. 41, s. 1.

Attorney General may recover costs in revenue cases.

9. In case in any information, action, suit or other legal proceeding before any Court or tribunal in Ontario, by or on behalf of the Crown, against any corporation or person, in respect of any lands, tenements or hereditaments, or of any goods or chattels belonging to or accruing to the Crown, or standing or being in the name of Her Majesty, or in respect of any sum of money due and owing to Her Majesty, by virtue of any vote of the Legislature for the service of the Crown, or by virtue of any statute relating to the public revenue, or in any manner whatsoever, judgment is given for the Crown, Her Majesty's Attorney-General may recover costs, in the same manner as, and under the same rules, regulations and provisions that apply to the payment or receipt of costs in proceedings between subject and subject. C. S. U. C. c. 21, s. 6.

Defendant may recover costs in revenue cases.

10. If in any such information, action, suit or other proceeding, judgment is given against the Crown, the defendant may recover costs, in like manner and subject to the same rules and provisions as though such proceeding had been had between subject and subject; and the Provincial Treasurer shall pay such costs out of any moneys voted for that purpose. C. S. U. C. c. 21, s. 7.

#### SCIRE FACIAS TO REPEAL LETTERS PATENT.

Court of Chancery and Superior Courts may issue writs of *scire facias* in the same manner, etc., as the Court of Chancery in England.

11. Notwithstanding the want of enrolment, it shall be lawful for the Court of Chancery, or either of the Superior Courts of Common Law to issue writs of *scire facias* to repeal letters patent, grants or other matter of record under the Great Seal, in the same manner and under the same restrictions, as nearly as may be, as such writs were on the fifth day of December, 1859, issuable from the Court of Chancery in England; and all the proceedings thereafter shall be, as nearly as may be, the same as in England, on the said day. C. S. U. C. c. 21, s. 13.

Exemplification of letters patent, etc., to be filed, and *fiat* of Attorney General to be obtained before writ issues.

12. Before the issue of any such writ of *scire facias*, the party making application for the same shall, in addition to the *fiat* of the Attorney General, file in the Court from which the writ is to be issued an exemplification under the Great Seal of the Province of the letters patent, grant or other matter of record upon which the said writ of *scire facias* is to be founded. C. S. U. C. c. 21, s. 14.

Judges to meet and make rules and orders under this Act.

13. The Judges of the said Court of Chancery and of the said Superior Courts of Common Law, or any six of them, of whom the Chancellor and the two Chief Justices shall be three, may make such General Rules and Orders as in their judgment may be necessary or proper for the effectual execution of the

two last preceding sections and of the intention and object thereof, and for that purpose may meet from time to time as occasion requires. C. S. U. C. c. 21, s. 15.

CHAPTER 59.

An Act respecting the Procedure in Suits against the Crown by Petition of Right.

Short title, s. 1.	Pleadings and proceedings on default, ss. 8-11.
Interpretation, s. 2.	Changing venue, s. 12.
Petition of right, form of, s. 3.	Trial of issues, s. 13.
Obtaining <i>fieri</i> of Lieutenant-Governor, ss. 4,5.	Judgment, ss. 14,15.
Service on person in possession of real property, s. 6.	Costs, ss. 16-19.
Appearance by him, s. 7.	Proceeding may be had as before the Act, s. 20.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as “*The Ontario Petition of Right Act.*” Short title.

2. In the construction of this Act, Interpretation

(1) “Court” shall mean any one of the Superior Courts in which a petition of right under this Act is presented ;

(2) “Judge” shall mean a Judge of any of the said Courts respectively ;

(3) “Relief” shall comprehend every species of relief claimed or prayed for in any such petition of right, whether a restitution of any incorporeal right, or a return of lands or chattels, or a payment of money or damages or otherwise. 35 V. c. 13, s. 17.

*Petition, Form and Service of, &c.*

3. A petition of right may, if the suppliant thinks fit, be entitled in any one of the Superior Courts in which the subject matter of such petition or any material part thereof would have Form of petition of right.

been cognizable if the same had been a matter in dispute between subject and subject, and shall state in the margin the venue for the trial of such petition; and such petition shall be addressed to Her Majesty in the words or to the effect of Form No. 1 in the Schedule to this Act annexed, and shall state the Christian name and surname and usual place of abode of the suppliant and of his solicitor or attorney, if any, by whom the same is presented, and shall set forth with convenient certainty the facts entitling the suppliant to relief, and shall be signed by such suppliant, his counsel or attorney. 35 V. c. 13, s. 1.

Petition to be submitted to Lieutenant-Governor for his fiat.

4. The said petition shall be left with the Provincial Secretary, in order that the same may be submitted to the Lieutenant-Governor for his consideration, and in order that the Lieutenant-Governor, if he thinks fit, may grant his *fiat* that right be done; and no fee or sum of money shall be payable by the suppliant on so leaving such petition, or upon his receiving back the same. 35 V. c. 13, s. 2.

Proceedings after fiat is obtained.

5. Upon the Lieutenant-Governor's *fiat* being obtained to such petition, a copy of such petition and *fiat* shall be left at the office of the Attorney-General, with an endorsement thereon in the words or to the effect of Form No. 2 in the Schedule to this Act annexed, praying for a plea or answer on behalf of Her Majesty within twenty-eight days. 35 V. c. 13, s. 3.

Service on person in possession of real property.

6. In case any such petition of right is presented for the recovery of any real or personal property, or any right in or to the same, which has been granted away or disposed of by or on behalf of Her Majesty or Her Predecessors, a copy of such petition, allowance and *fiat* shall be served upon or left at the last or usual or last known place of abode of the person in the possession, occupation or enjoyment of such property or right, endorsed with a notice in the words or to the effect of Form No. 3 in the Schedule to this Act, requiring such person to appear thereto within eight days, and to plead or answer thereto in the Court in which the same is prosecuted, within fourteen days after the same has been so served or left as aforesaid. 35 V. c. 13, s. 5.

Appearance.

7. It shall not be necessary to issue any *scire facias* or other process to any person so served for the purpose of requiring him to appear and plead or answer to such petition, but he shall, within the time so limited, if it be intended by him to contest such petition, enter an appearance to the same in the words or to the effect of Form No. 4 in the Schedule to this Act, and shall plead, answer or demur to the said petition within the time specified in such notice, or such further time as may be allowed by the Court or a Judge. 35 V. c. 13, s. 5.

*Pleadings, &c.*

8. The time for answering, pleading or demurring to such petition, on behalf of Her Majesty, shall be the said period of twenty-eight days after the same, with such prayer of a plea or answer as aforesaid, has been left at the office of the said Attorney-General, or such further time as may be allowed by the Court or a Judge. 35 V. c. 13, s. 4.

Time for  
pleading or  
demurring.

9. The petition may be answered by way of answer or demurrer in the Court of Equity, or in a Court of Common Law, by way of plea or demurrer, or by both pleas and demurrer, by or in the name of Her Majesty's Attorney-General on behalf of Her Majesty, and by or on behalf of any other person who may, in pursuance hereof, be called upon to plead or answer thereto, in the same manner as if such petition when prosecuted in a Court of Equity were a bill filed therein, and as if such petition when prosecuted in a Court of Common Law were a declaration in a personal action, and without the necessity for any inquiry finding the truth of such petition or the right of the suppliant; and such and the same matter as would be sufficient ground of answer or defence in point of law or fact to such petition on the behalf of Her Majesty, may be alleged on behalf of any such other person, as aforesaid, called on to plead or answer thereto. 35 V. c. 13, s. 6.

Pleadings in  
answer to pe-  
tition.

10. So far as the same are applicable, and except in so far as is inconsistent with this Act, the laws and statutes in force as to pleading, evidence, hearing and trial, security for costs, amendment, arbitration, special cases, the means of procuring and taking evidence, set off, appeal and proceedings in error, in suits in Equity and in personal actions between subject and subject, and the Rules, Orders, practice and course of procedure of the said Courts of Law and Equity respectively for the time being in reference to such suits and personal actions, shall, unless the Court in which the petition is prosecuted otherwise orders, be applicable and apply and extend to such petition of right. 35 V. c. 13, s. 8.

Rules of plead-  
ing, &c.

11. In case of a failure on the behalf of Her Majesty, or of any such other person as aforesaid called upon to answer or plead to such petition, to plead, answer or demur in due time, either to such petition, or at any subsequent stage of the proceedings thereon, the suppliant shall be at liberty to apply to the Court or a Judge for an order that the petition may be taken as confessed; and the Court or Judge, on being satisfied that there has been such failure to plead, answer or demur in due time, may order that such petition may be taken as confessed, as against Her Majesty, or such other party so making default; and in case of default on the behalf of Her Majesty, and any other such person (if any) called upon, as aforesaid, to answer or plead thereto, a decree may be made

In default of  
plea, etc.,  
applicant to  
take petition  
*pro confesso*



by the Court, or leave may be given by the Court, on the application of the suppliant, to sign judgment in favour of the suppliant.

2. Such decree or judgment may afterwards be set aside by such Court or a Judge in its or his discretion, upon such terms as to it or him seem proper. 35 V. c. 13, s. 9.

### *Change of Court or Venue.*

Change of  
Court or venue

**12.** The Court in which the petition was originally entitled, or a Judge in Chambers, on the application of the Attorney-General or of the suppliant, may change the Court in which such petition is being prosecuted, or the venue for the trial of the same. 35 V. c. 13, s. 4.

### *Trial of Issues.*

Issues to be  
tried by a  
Judge without  
a jury.

**13.** Any issue of fact or assessment of damages to be tried or had under this Act, shall be tried or had by a Judge without a jury. 35 V. c. 13, s. 7.

### *Judgment.*

The judgment  
or decree.

**14.** Upon every such petition of right, the decree or judgment of the Court, whether given upon demurrer, upon the pleadings, or upon a default to answer or plead in time, or after hearing or verdict, or otherwise, shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief sought by his petition, or such other relief as the Court thinks right, and such Court may give a decree or judgment that the suppliant is entitled to such relief, and upon such terms and conditions (if any) as such Court thinks just. 35 V. c. 13, s. 10.

When judgment to be  
equivalent to  
*amoveas manus*.

**15.** In all cases in which the judgment, commonly called a judgment of *amoveas manus*, was formerly in England pronounced or given upon a petition of right, a judgment that the suppliant is entitled to relief, as hereinbefore provided, shall be of such and the same effect as such judgment of *amoveas manus*. 35 V. c. 13, s. 11.

### *Costs.*

Costs against  
suppliant.

**16.** Upon any such petition of right, the Attorney-General, or other person appearing on behalf of Her Majesty, and every such other person as aforesaid, who appears, and pleads, answers or demurs, shall be entitled respectively to recover costs against the suppliant, in the same manner, and subject to the same restrictions and discretion, and under the same rules, regulations and provisions, so far as they are applicable, as are or may be usually adopted, or in force, touching the payment or

receipt of costs in proceedings between subject and subject; and for the recovery of such costs, such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon judgments in personal actions or decrees, rules or orders, shall and may be prosecuted, sued out and executed respectively by or on behalf of Her Majesty, and of such other person, as aforesaid, as appears and pleads to such petition; and any costs recovered on behalf of Her Majesty shall be paid to the Provincial Treasurer. 35 V. c. 13, s. 12.

**17** Upon any such petition of right, the suppliant shall be entitled to costs against Her Majesty, and also against any other person appearing or pleading, or answering to any such petition of right, in like manner, and subject to the same rules, regulations and provisions, restrictions and discretion, so far as they are applicable, as are or may be usually adopted, or in force, touching the right to recover costs in proceedings between subject and subject; and for the recovery of any such costs from any such person, other than Her Majesty, appearing or pleading, or answering in pursuance hereof to any such petition of right, such and the same remedies and writs of execution as are authorized for enforcing payment of costs upon rules, orders, decrees or judgments in personal actions between subject and subject, shall and may be prosecuted, sued out and executed on behalf of such suppliant. 35 V. c. 13, s. 13.

**18.** Wherever, upon such petition of right, a judgment, order or decree is given or made that the suppliant is entitled to relief, and there is no re-hearing, appeal, or proceeding in error, and wherever upon a re-hearing, appeal, or proceeding in error, a judgment, decree or order is affirmed, given or made, that the suppliant is entitled to relief, and wherever any rule or order is made entitling the suppliant to costs, any one of the Judges of the Court in which such petition has been prosecuted shall and may, upon application in behalf of the suppliant, after the lapse of fourteen days from the making, giving or affirming of such judgment or decree, rule or order, certify to the Provincial Treasurer the tenor and purport of the same, in the words or to the effect of Form No. 5 in the Schedule to this Act; and such certificate may be sent to or left at the office of the Provincial Treasurer. 35 V. c. 13, s. 14.

**19.** Upon the tenor and purport of any judgment, decree, rule or order being certified to him as aforesaid, the Provincial Treasurer shall pay out of any moneys in his hands, for the time being legally applicable thereto, or which may be thereafter voted by the Legislature for that purpose, the amount of any moneys and costs awarded by such judgment, decree, rule or order, to the suppliant in any such petition of right. 35 V. c. 13, s. 15.

Costs to suppliant.

If judgment be for relief, etc., Judge to certify to Provincial Treasurer.

Payment by Provincial Treasurer.

Suppliant  
may proceed  
as heretofore.

20. Nothing in this Act contained shall prevent any suppliant from proceeding as before the passing of this Act. 35  
V. c. 13. s. 21.

## SCHEDULE OF FORMS.

### FORM 1.

(Section 3.)

#### PETITION.

In the Queen's Bench (*or* Common Pleas, *or* In Chancery.)

To the Queen's most excellent Majesty.

County of York, {

To Wit : } The humble petition of *A. B.*, of \_\_\_\_\_, by  
his Attorney, *E. F.*, of \_\_\_\_\_, sheweth that (*state*  
*the facts*).

*Conclusion.*

Your suppliant therefore humbly prays that, &c.  
Dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D.

(Signed) \_\_\_\_\_ *A. B.*  
or *C. D.*, Counsel for *A. B.*  
or *E. F.*, Attorney for *A. B.*

### FORM 2.

(Section 5.)

The suppliant prays for a plea or answer on behalf of Her Majesty within twenty-eight days after the date hereof, or otherwise that the petition may be taken as confessed.

### FORM 3.

(Section 6.)

#### NOTICE TO APPEAR.

To *A. B.*

You are hereby required to appear to the within petition in Her Majesty's Court of Queen's Bench (*or* Common Pleas, *or* Court of Chancery) within eight days, and to plead or answer thereto within fourteen days after the date of service hereof.

Take notice, that if you fail to appear or plead or answer in due time, the said petition may, as against you, be ordered to be taken as confessed.  
Dated, &c.

FORM 4.

(Section 7.)

APPEARANCE.

In the Queen's Bench (or Common Pleas, or In Chancery)

*Petition of Right.*

A. B., suppliant, }  
                  <sup>vs.</sup> }  
The Queen.        }    C. D. appears in person.  
                              }    or E. F., attorney or solicitor for C. D.,

appears for him.

(If the appearance is in person, the address of the party appearing to be given.)

Entered the                    day of                    , 187 .

FORM 5.

(Section 18.)

CERTIFICATE OF JUDGMENT FOR PETITIONER.

To the Honourable the Treasurer of Ontario.

Petition of right of A. B., in Her Majesty's Court of Queen's Bench (or Common Pleas, or Court of Chancery) at Toronto.

I hereby certify that on the                    day of                    , A.D.                    , it was by the said Court of Queen's Bench (Common Pleas, or Court of Chancery) adjudged (or decreed or ordered) that the above named suppliant was entitled to, &c.

*Judge's signature.*



## CHAPTER 60.

An Act respecting the Administration by the Crown of the Estates of Intestates in certain cases.

---

Application by the Attorney-General for administration where the Crown is interested, s. 1.	administration, s. 6.
Application in cases where an intestate leaves no known relatives in the Province, s. 2.	Enquiries as to the rights of the Crown, s. 7.
Rights, &c., of Attorney-General to vest in his successors, s. 3.	Disposition of moneys received by the Attorney-General, s. 8.
Security dispensed with, s. 4.	Interest allowable to persons entitled to moneys, s. 9.
Power of administrator to sell real estate, s. 5.	Rights of persons having claims on the estate, s. 10.
Rights of relatives after issue of	Attorney-General may retain disbursements made in respect of enquiries, s. 11.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

At the instance of Lieutenant-Governor, administration may issue to the Attorney-General in cases where nominee of the Crown entitled to administer.

1. So often as the Lieutenant-Governor, by a warrant under his privy seal, is pleased to direct Her Majesty's Attorney-General for Ontario for the time being to apply for and obtain letters of administration (whether general or limited) of the personal estate and effects of any person dying intestate, or intestate as to some part of his estate, where, in respect of the interest of Her Majesty in such estate and effects, such administration may be rightfully granted to a nominee of Her Majesty, it shall be lawful for any competent Court in this Province, upon application, in pursuance of such warrant, to grant, by the name of office of such Attorney-General, administration accordingly to the said Attorney-General and his successors in the office of Attorney-General for Ontario, for the use and benefit of Her Majesty. 36 V. c. 21, s. 1.

Attorney-General may obtain letters of administration of intestates leaving no known relatives within the Province.

2. When any person dies in this Province intestate either in whole or in part, and without leaving any known relatives living within the Province, or any known relatives who can be readily communicated with living elsewhere, the Lieutenant-Governor may (if he thinks fit) by warrant under his privy seal direct the Attorney-General for the Province of Ontario for the time being, to apply for and obtain letters of administration, whether general or limited, of the personal estate and effects of any such person; and it shall be lawful for any com-

petent Court in this Province upon application in pursuance of such warrant, to grant administration accordingly to the said Attorney-General by his name of office, and his successors in the office of Attorney-General for Ontario, for the use and benefit of Her Majesty or of such persons as may ultimately appear to be entitled thereto. 40 V. c. 4, s. 1. .

3. In any of such cases, the administration so granted, and the office of administrator under the grant, with all the estates, rights, duties and liabilities of such administrator, shall, upon the death, resignation, or removal of the Attorney-General for Ontario for the time being, devolve upon and become vested and continue in the succeeding Attorney-General, by virtue of his appointment, and so in perpetual succession, without any further grant of administration, or any assignment or transfer of the estates of the administrator; and all actions, suits, informations, and other proceedings whatever at Law or in Equity, by or against the Attorney-General for the time being, as such administrator at the time of his death, resignation, or removal, shall continue, and may be proceeded with, by, in favour of, and against the succeeding Attorney-General, in like manner; saving always, the effect of every limitation in duration or otherwise under the terms of the grant of any such administration, and saving to every Court having jurisdiction in this behalf all such right and authority to revoke or repeal any such administration as such Court would have had during the continuance of a like administration granted to a nominee of Her Majesty in case this Act had not been passed. 36 V. c. 21, s. 2. See 40 V. c. 4, s. 2.

Rights and liabilities, etc. of the Attorney-General as administrator to vest in his successors.

Power to revoke administration.

4. It shall not be necessary for the said Attorney-General for the time being applying for or obtaining grants of administration, to the use or benefit of Her Majesty, to enter into, or cause to be entered into, any bond to the Judge of the Surrogate Court, commonly called an administration bond; but the Attorney-General for Ontario for the time being shall, in relation to every such administration, be subject to all the liabilities and duties imposed on an administrator by the condition of the bond prescribed by the Rules and Orders now in force or hereafter made under "*The Surrogate Courts Act*." 36 V. c. 21, s. 3.

Security for due administration dispensed with.

Liability of Attorney-General to be as in condition of bond.

Rev. Stat. c. 46.

5. Where administration is granted to the Attorney-General of Ontario under this Act, the Lieutenant-Governor in Council may direct the sale, either by public auction or private sale, of any real estate in Ontario (including any interest in any such real estate), to which the intestate died entitled; and the said Attorney-General shall thereupon be authorized to sell in accordance with the directions of any Order in Council in that behalf, the whole, or any part of the real estate aforesaid, and to convey the same to the purchaser or purchasers; and every such conveyance by the Attorney-General or his successor in office as aforesaid shall be as valid and effectual as if the deceased were alive at the

Power to sell the real estate of the intestate.

time of the making thereof, and had executed the same, but shall not have any further validity. 40 V. c. 4, s. 3.

Rights of relations after the issue of administration.

6. In case subsequently to the grant of administration under this Act it is alleged or ascertained that the deceased has relatives or did not die intestate, the Attorney-General for Ontario may, if he thinks fit, exercise, subject to the discretion of the Lieutenant-Governor in Council, all or any of the powers by this Act conferred until some person or persons is or are appointed by some Court or Courts of competent jurisdiction to deal with the real estate of the deceased; and notwithstanding any such appointment, any sale made in pursuance of this Act may be completed by the execution by the Attorney-General of a conveyance; and until the revocation of the letters granted, the Attorney-General may exercise fully all the powers vested in him as administrator of the personal estate of the deceased. 40 V. c. 4, s. 4.

Enquiry as to the rights of Her Majesty.

7. In any case where administration is taken out under the provisions of this Act, the Attorney-General may apply to the Court of Chancery for an order for the making of such enquiries as may be necessary to determine whether or not Her Majesty is entitled to any portion of the real or personal estate of the deceased on account of the deceased dying intestate and without heirs or next of kin, or otherwise. Any decree made upon such enquiry shall, unless reversed on appeal, be final and conclusive. 40 V. c. 4, s. 5.

Disposition of moneys.

8. Moneys realized from estates to which the Attorney-General is administrator under this Act, shall be kept in a separate account in such bank or invested in such manner as the Lieutenant-Governor may from time to time appoint, and all moneys which have been unclaimed for ten years shall from time to time be paid into the Consolidated Revenue Fund of Ontario. 40 V. c. 4, s. 6.

Interest allowable to persons entitled to moneys.

9. Any person proving his title to any such moneys shall be entitled to receive the same with interest at such a rate as the Lieutenant-Governor may, having regard to the rate realized therefrom, from time to time direct. 40 V. c. 4, s. 7.

Rights of persons having claims upon the estate.

10. Any one claiming to be entitled to any such estate or to any interest therein or to any part of the proceeds thereof, may apply to the Court of Chancery upon petition for an order or decree declaring his rights in respect thereto; and the said Court may thereupon order such enquiries as may be necessary to determine the same and may finally adjudicate thereupon; but no application under this section shall be entertained unless security for costs is given by the applicant in case the Attorney-General thinks fit to demand the same. 40 V. c. 4, s. 8.

Attorney-General may retain dis-

11. The Attorney-General may deduct from any moneys received on account of any estate all disbursements made by

him in respect to any enquiries which he may have considered it expedient to make before taking out administration, as well as all disbursements otherwise made by him in respect of such estate. 40 V. c. 4, s. 9.

CHAPTER 61.

An Act respecting the Limitation of certain actions.

Limitation of:	Actions for penalties, s. 1 (g).
Actions of debt upon a demise, 1 (a).	Actions of account or between merchants, s. 2.
Actions on specialties, s. 1 (b).	Disabilities, s. 3.
Actions on recognizances, s. 1 (c).	Cases of actions against joint debtors, ss. 4, 5.
Actions of debt on awards, s. 1 (d).	Effect of acknowledgments, s. 6, 7.
Actions for an escape, s. 1 (e).	Limitation in intestacy, s. 8.
Actions for money levied under a <i>fi. fa.</i> , s. 1 (f).	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows

1. The actions hereinafter mentioned shall be commenced and sued within the times respectively hereinafter mentioned, and not after, that is to say:—

Limitation of time for commencing particular actions.

- (a) Actions of debt for rent, upon an indenture of demise,
- (b) Actions of covenant or debt, upon a bond, or other specialty,
- (c) Actions of debt or *scire facias*, upon a recognizance,

within twenty years after the cause of such actions arose ;

- (d) Actions of debt upon an award where the submission is not by specialty,
- (e) Actions for an escape,
- (f) Actions for money levied on a *fi. fa.*,

within six years after the cause of such actions arose ;

- (g) Actions for penalties, damages, or sums of money given to the party aggrieved, by any statute,

within two years after the cause of such actions arose ;



Where time specially limited.

2. But nothing herein contained shall extend to any action given by any statute, where the time for bringing such action is by the statute specially limited. C. S. U. C. c. 78, s. 7.

Actions of account, etc., to be commenced within six years.

2. All actions of account or for not accounting, and suits for such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants, shall be commenced and sued within six years after the cause of such actions or suits arose; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit, shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account, having arisen within six years next before the commencement of such action or suit. 26 V. c. 45, s. 5.

In case of disabilities.

3. In case any person entitled to any such action, or to such *scire facias*, is at the time of any such cause of action accruing, within the age of twenty-one years, or *non compos mentis*, then such person may bring any such action, within such time after coming to or being of full age, or of sound memory, as other persons having no such impediment should, according to the provisions of this Act, have done; and if any person against whom any such cause of action accrues, is at such time without the limits of Ontario, the person entitled to such cause of action may bring the action within such times as are before limited, after the return of the absent person to Ontario. C. S. U. C. c. 78, s. 8; 25 V. c. 20, s. 1.

As to cases where some of joint debtors have been within and some without Ontario.

21 Jas. i, c. 16, s. 3.

4. Where any cause of action or suit, with respect to which the period of limitation is fixed by the Imperial Act of the twenty-first year of the Reign of King James the First, chapter sixteen, section three, or by any Act now in force in Ontario or any of them, lies against two or more joint debtors, the person or persons entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who were within Ontario at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were, at the time such cause or action accrued, without Ontario. 26 V. c. 45, s. 6.

The same.

5. Such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors, who was or were without Ontario at the time the cause of action or suit accrued, after his or their return to Ontario, by reason only that judgment was already recovered against any one or more of such joint debtors, who was or were within Ontario at the time aforesaid. 26 V. c. 45, s. 7.

Effect of written acknow-

6. In case any acknowledgement in writing, signed by the principal party or his agent, is made, by any person liable by

virtue of any indenture, specialty or recognizance, or in case any acknowledgment is made by any such person by part payment, or part satisfaction, on account of any principal or interest due on any such indenture, specialty or recognizance, the person entitled to an action in respect to such liability, may bring his action for the money remaining unpaid and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part payment, or part satisfaction, as aforesaid; or in case the person entitled to such action is at the time of such acknowledgment, under any disability, as aforesaid, or the party making the acknowledgment is, at the time of making the same without Ontario, then within twenty years after such disability has ceased, as aforesaid, or the party has returned, as the case may be; and the plaintiff or plaintiffs in any such action, on any indenture, specialty or recognizance, may, by way of replication, in answer to a plea of this statute, state such acknowledgment, and that such action has been brought within the time aforesaid. C. S. U. C. c. 78, s. 9.

ledgment or  
part payment.

Acknowledg-  
ment may be  
replied.

7. If in any of the actions hereinbefore mentioned, judgment is given for the plaintiff, and the same is reversed for error in a Court of Error or Appeal, or if a verdict passes for the plaintiff, and upon matter alleged in arrest of judgment the judgment is given against the plaintiff that he take nothing by his writ or action, or if the defendant in any of the said actions being outlawed, obtains a reversal of the outlawry, the plaintiff, his executors or administrators, as the case requires, may commence a new suit or action, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or the outlawry reversed, and not after. C. S. U. C. c. 78, s. 10.

In case judg-  
ment be  
reversed for  
error, &c., new  
action may be  
replied.

#### LIMITATION IN INTESTACY.

8. No suit or other proceeding shall be brought to recover the personal estate, or any share of the personal estate of any person dying intestate, possessed by the legal personal representative of such intestate, but within twenty years next after a present right to receive the same accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of such estate or share, or some interest in respect thereof has been accounted for or paid, or some acknowledgment of the right thereto has been given in writing, signed by the person accountable for the same, or his agent, to the person entitled thereto, or his agent; and in such case, no such action or suit shall be brought but within twenty years after such accounting, payment or acknowledgment, or the last of such accountings, payments or acknowledgments, if more than one, was made or given. 29 V. c. 28, s. 30.

A suit to reco-  
ver personal  
estate of an  
intestate or  
any part  
thereof, must  
be brought  
within twenty  
years.  
Imp. Act, 23  
and 24 V. c. 38,  
s. 13.

## CHAPTER 62.

## An Act respecting Witnesses and Evidence.

## COMPETENCY OF WITNESSES.

Crime or interest not to exclude,  
s. 2, 3.

Husband and wife, ss. 4-8.

In cases under License and Municipal Acts, &c., s. 9.

In cases against representatives,  
s. 10.

In cases against lunatics, s. 11.

AFFIRMATIONS, ss. 12-14.

## ATTENDANCE OF WITNESSES.

Subpoenas within the Province,  
ss. 15-18.

Subpoenas to the Province of  
Quebec, C. S. C. c. 79, ss. 4-13,  
p. 781.

Commissions to examine witnesses, ss. 19-23.

## EXAMINATION OF WITNESSES:

Proof of previous contradictory  
statements in writing, s. 24.

Proof of previous contradictory  
oral statements, s. 25.

Proof of previous conviction, s. 26.

Discrediting a party's own witness,  
s. 27.

## PUBLIC DOCUMENTS, &amp;C., AS EVIDENCE.

Official documents, ss. 28, 29.

Signatures of Judges, s. 30.

Foreign judgments, s. 31.

Notarial documents, Quebec, ss.  
32, 33.

Protests of Bills and Notes, ss.  
34-36.

Certain Statutes, s. 37.

Affidavits made out of Ontario,  
ss. 38-40.

Wills, ss. 41-44.

Registered instruments, s. 45-47.

Other written instruments, s. 48.

## MISCELLANEOUS.

Evidence sufficient between vendor and purchaser to be sufficient in other cases, s. 49.

Attesting witnesses where not required, s. 50.

Comparison of handwriting, s. 51.

Impounding instruments offered in evidence, s. 52.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as "*The Evidence Act.*"

## COMPETENCY OF WITNESSES.

Witnesses not to be incapacitated by crime or interest.

2. No person offered as a witness shall hereafter be excluded by reason of any alleged incapacity from crime or interest from giving evidence either in person or by deposition, according to the practice of the Court, on the trial of any issue joined or of any matter in question, or on any inquiry arising, in any civil suit, action or proceeding, in any Court, or before any Judge, jury, Sheriff, Coroner, Justice of the Peace, officer or person having, by law or by consent of parties, authority to hear, receive and examine evidence. 33 V. c. 13, s. 2.

**3.** Every person so offered shall be admitted to give evidence on oath or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person has an interest in the matter in question, or in the event of the trial of any issue, matter, question or inquiry, or of the suit, action or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness has been previously convicted of any crime or offence. 33 V. c. 13, s. 3.

Such persons admitted to give evidence.

**4.** On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any civil suit, action, or other proceeding in any Court of Law or Equity in this Province, or before any person having, by law or by consent of parties, authority to hear, receive and examine evidence, the parties to such proceedings, and the persons in whose behalf any such suit, action or other proceeding, is brought or instituted, or opposed, or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the Court, on behalf of themselves or of either or any of the parties to the suit, action or proceeding; and the husbands and wives of such parties and persons shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action or proceeding. 33 V. c. 13, s. 4; 36 V. c. 10, s. 1.

Evidence of parties to a suit, &c.

Evidence of husband and wife.

**5.** Nothing herein contained shall render any person compellable to answer any question tending to criminate himself or to subject him to prosecution for any penalty. 33 V. c. 13, s. 5 (d).

Questions tending to criminate need not be answered.

**6.** Nothing herein contained shall apply to any action for breach of promise of marriage. 33 V. c. 13, s. 5 (b).

Act not to apply in actions of breach of promise of marriage.

**7.** Nothing herein contained shall apply to the trial, in any action, suit or other civil proceeding, of the question of the adultery of any party or the husband or wife of any party to such action, suit or other proceeding. See 33 V. c. 13, s. 5 (b). 36 V. c. 10, s. 3.

Nor in certain cases to trial of questions of adultery.

**8.** No husband shall be compellable to disclose any communication made by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage. 33 V. c. 13, s. 5 (c); 36 V. c. 10, s. 2.

Communications made during marriage.

**9.** On the trial of any proceeding, matter or question, under "The Liquor License Act," or under "The Municipal Act," or under "The Assessment Act," or under any other Act of the Legislature of Ontario, or on the trial of any proceeding, matter or question before any Justice or Justices of the Peace, Mayor, or

Evidence in trials under Rev. Stat. cc. 181, 174, 180, or other Acts of Ontario.



or Police Magistrate, in any matter cognizable by such Justice or Justices, Mayor, or Police Magistrate, not being a crime, the party opposing or defending, or the wife or husband of such person opposing or defending, shall be competent and compellable to give evidence in such proceeding, matter or question. 36 V. c. 10, s. 4.

In suits by or against representatives of a deceased person, the evidence of the opposite party must be corroborated.

**10.** In a suit by or against the heirs, executors, administrators, or assigns of a deceased person, an opposite or interested party to the suit shall not obtain a verdict, judgment, or decision therein, on his own evidence, in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence. 36 V. c. 10, s. 6.

In suits by or against lunatics, etc., evidence of opposite party to be corroborated.

**11.** In a suit by or against a person found by inquisition to be of unsound mind, or being an inmate of a lunatic asylum, an opposite or interested party shall not obtain a verdict, judgment, or decision therein, on his own evidence, unless such evidence is corroborated by some other material evidence. 36 V. c. 10, s. 7.

#### AFFIRMATIONS.

Quakers, Menonists, Tunkers, &c., permitted to make affirmation.

**12.** In any civil case in which an oath, declaration or affirmation is required by law, or upon any lawful occasion whatever on which the oath of any person is by law admissible, a Quaker, Menonist or Tunker, or a member of the church known as the "Unitas Fratrum," or the United Brethren, sometimes called the Moravian Church, having first made the following declaration or affirmation, viz.:

"I, A. B., do solemnly, sincerely and truly declare and affirm that I am one of the Society called Quakers, Menonists, Tunkers or Unitas Fratrum or Moravians" (*as the case may be*);

may make his affirmation or declaration in the form following, that is to say:

"I, A. B., do solemnly, sincerely and truly affirm and declare," &c. ;

and such affirmation or declaration shall have the same force and effect to all intents and purposes, in all Courts of Law and Equity and all other places, as an oath taken in the usual form. C. S. U. C. c. 32, s. 1.

Certain persons may make affirmation or declarations instead of oaths.

**13.** If any person called as a witness, or required or desiring to make an affidavit or deposition in any civil proceeding, or on any occasion other than in a criminal proceeding whereon or touching any matter respecting which an oath is now, or hereafter may be requisite by law, whether on taking office or otherwise, refuses or is unwilling, from alleged conscientious motives, to be sworn, the Court, or Judge, or other presiding officer, or person qualified to take affidavits or depositions,

may permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following, viz. :—

“I, *A. B.*, do solemnly, sincerely and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful ; and I do also solemnly, sincerely and truly affirm and declare,” &c. ;

which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form. 33 V. c. 14, s. 1.

**14.** Every person authorized or required to administer an oath for any purpose, may administer any such affirmation or declaration as aforesaid. C. S. U. C. c. 32, s. 2.

Persons authorized to administer oaths may administer affirmation.

#### SUBPŒNAS.

**15.** All writs of *subpœna* may be tested, or may bear date upon the day when the same are issued. 36 V. c. 9, s. 6.

Teste and date of subpœnas.

**16.** The several County Courts may issue writs of *subpœna ad testificandum* to enforce the attendance of any witnesses resident within Ontario, and also writs of *subpœna duces tecum* to enforce the attendance of and the production of deeds and papers by any such witnesses, and may proceed against persons who, having been duly served with a *subpœna*, disregard or disobey the same, with the same powers, in like manner and by the same mode of proceeding as belongs to and is practised in the Superior Courts. C. S. U. C. c. 32, s. 13.

County Courts may issue *subpœnas* to any part of Ontario.

**17.** Such witnesses shall be entitled to the same allowance as if attending under *subpœna* from either of the said Superior Courts. C. S. U. C. c. 32, s. 14.

To what allowance such witnesses entitled.

**18.** Wherever any party in any civil suit or action desires to call the opposite party as a witness at the hearing or trial, he shall either *subpœna* such party or give to him or his attorney at least eight days' notice of the intention to examine him as a witness in the cause, and if such party does not attend on such notice or *subpœna*, such non-attendance shall be taken as an admission *pro confesso* against him in any such suit or action, unless otherwise ordered by the Court or Judge in which or before whom such examination is pending, and a general finding or judgment may be had against the party thereon, or the plaintiff may be non-suited, or the proceedings in the action or such suit may be postponed by the Court or Judge, on such terms as the Court or Judge sees fit to impose. C. S. U. C. c. 32, s. 15.

A party to any civil suit may be summoned as a witness by the opposite party, and consequences of non-attendance.

#### COMMISSIONS TO TAKE EVIDENCE.

**19** In case a party to any civil suit or action is resident out of Ontario, and in case the opposite party requires a

How to proceed if a party resides abroad.

commission to examine such non-resident party, and states by affidavit the facts intended to be proved before such commission, and in case the Court or Judge is satisfied that such commission is applied for in good faith and not for purposes of delay, the Court in which the suit or action has been brought, or any Judge thereof, may, at the instance of the opposite party, issue a commission for the examination of such non-resident party in the same manner as a commission may be issued for the examination of witnesses. C. S. U. C. c. 32, s. 16.

If he refuses to attend.

**20.** If such party refuses to attend before the Commissioners, such refusal, being proved by affidavit or otherwise to the satisfaction of a Judge of the Court in which the suit or the trial is pending, shall authorize a verdict or judgment to pass against the party, or he shall become non-suited. C. S. U. C. c. 32, s. 17.

Commissions may issue to examine persons aged, infirm or absent from Ontario.

**21.** In case the plaintiff or defendant in any action in either of the Superior Courts or in any County Court, is desirous of having at the trial thereof the testimony of any aged or infirm person resident within Ontario, or of any person who is about to withdraw therefrom, or who is residing without the limits thereof, the Superior Court in which the action is pending, or a Judge of either of such Courts, or the County Court in which the action is pending, or a Judge thereof, may, upon the motion of such plaintiff or defendant, and upon hearing the parties, order the issue of a commission or commissions under the seal of the Court in which the action is pending, to a Commissioner or Commissioners, to take the examination of such person or persons respectively. C. S. U. C. c. 32, s. 19.

Notice to be given to the adverse party.

**22.** Due notice of every such commission shall be given to the adverse party, to the end that he may cause the witnesses to be cross-examined. C. S. U. C. c. 32, s. 20.

How commissions executed abroad are to be proved.

**23.** In case the examination of any witness or witnesses taken without the limits of Ontario, pursuant to any such commission, is proved by an affidavit of the due taking of such examination, sworn before and certified by the Mayor or Chief Magistrate of the City or place where the same has been taken, and in case such commission with such examination and affidavit thereto annexed is returned to the Court from which such commission issued, close under the hand and seal of one or more of the Commissioners, the same shall *prima facie* be deemed to have been duly taken, executed and returned, and shall be received as evidence in the cause, unless it is made to appear to the Court in which such examination is returned and published, or before which the same is offered in evidence, that the same was not duly taken, or that the deponent is of sound mind, memory and understanding, and living within the jurisdiction of the Court at the time such examination is offered in evidence to such Court. C. S. U. C. c. 32, s. 21.

## ISSUE OF SUBPŒNAS INTO ANY PART OF ONTARIO OR QUEBEC.

[Sections 4-11 and 13 of C. S. C. c. 79, are as follows :

4. If in any action or suit depending in any of Her Majesty's Superior Courts of Law or Equity in Canada, it appears to the Court, or when not sitting, it appears to any Judge of the Court, that it is proper to compel the personal attendance at any trial, or *enquête* or examination of witnesses, of any person who may not be within the jurisdiction of the Court in which the action or suit is pending, the Court or Judge, in their or his discretion, may order that a writ called a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue in special form, commanding such person to attend as a witness at such trial or *enquête* or examination of witnesses wherever he may be in Canada. 18 V. c. 9, s. 1.

Courts may issue subpoenas to any part of Canada.

5. The service of any such writ or process in any part of Canada shall be as valid and effectual, to all intents and purposes, as if the same had been served within the jurisdiction of the Court from which it has issued, according to the practice of such Court. 18 V. c. 9, s. 1.

Service thereof in any part of Canada to be good.

6. No such writ shall be issued in any case in which an action is pending for the same cause of action, in that section of the Province, whether Upper or Lower Canada respectively, within which such witness or witnesses may reside, 18 V. c. 9, s. 1.

When not to be issued.

7. Every such writ shall have at the foot, or in the margin thereof, a statement or notice that the same is issued by the special order of the Court or Judge making such order, and no such writ shall issue without such special order. 18 V. c. 9, s. 2.

Writs to be specially noted.

8. In case any person so served does not appear according to the exigency of such writ or process, the Court out of which the same issued may, upon proof made of the service thereof, and of such default, to the satisfaction of such Court, transmit a certificate of such default, under the seal of the same Court, to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served may reside, being out of the jurisdiction of the Court transmitting such certificate, and the Court to which such certificate is sent, shall thereupon proceed against and punish such person so having made default, in like manner as they might have done if such person had neglected or refused to appear to a writ of subpoena or other similar process issued out of such last mentioned Court. 18 V. c. 9, s. 3.

Consequences of disobedience.

9. No such certificate of default shall be transmitted by any Court, nor shall any person be punished for neglect or refusal to attend any trial or *enquête* or examination of witnesses, in obedience to any such subpoena or other similar process, unless it be made to appear to the Court transmitting and also to the Court receiving such certificate, that a reasonable and sufficient sum of money, according to the rate *per diem* and per mile allowed to witnesses by the law and practice of the Superior Courts of Law within the jurisdiction of which such person was found, to defray the expenses of coming and attending to give evidence and of returning from giving evidence, had been tendered to such person at the time when the writ of subpoena, or other similar process, was served upon him. 18 V. c. 9, s. 3.

If expenses paid or tendered.

10. The service of such writs of subpoena or other similar process in Lower Canada, shall be proved by the certificate of a Bailiff within the jurisdiction where the service has been made, under his oath of office, and such service in Upper Canada by the affidavit of service endorsed on or annexed to such writ by the person who served the same. 18 V. c. 9, s. 3.

How service proved.



Costs of attendance provided for.

11. The costs of the attendance of any such witness shall not be taxed against the adverse party to such suit, beyond the amount that would have been allowed on a commission *rogatoire*, or to examine witnesses, unless the Court or Judge before whom such trial or *enquête* or examination of witnesses is had, so orders. 18 V. c. 9, s. 4.

Power to issue commissions to examine witnesses preserved.

13. Nothing herein contained shall affect the power of any Court to issue a commission for the examination of witnesses out of its jurisdiction, nor affect the admissibility of any evidence at any trial or proceeding, where such evidence is now by law receivable, on the ground of any witness being beyond the jurisdiction of the Court. 18 V. c. 9, ss. 6, 7.]

#### THE EXAMINATION OF WITNESSES.

Cross examination as to previous statements in writing.

24. Upon the trial of any cause a witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and the Judge at any time during the trial, may require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he thinks fit. C. S. U. C. c. 22, s. 210.

Proof of contradictory oral statements.

25. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he did make such statement. C. S. U. C. c. 22, s. 215.

Proof of previous conviction of a witness may be given if he denies it, etc.

26. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction, and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court at which the offender was convicted, or by the deputy of such Clerk or officer, shall, upon proof of the identity of the witness as such convict, be sufficient evidence of his conviction, without proof of the signature or of the official character of the person appearing to have signed the certificate.

Fee.

2. For such certificate a fee of one dollar and no more may be demanded or taken. C. S. U. C. c. 22, s. 211.

**27.** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but in case the witness, in the opinion of the Judge, proves adverse, such party may contradict him by other evidence, or, by leave of the Judge, may prove that the witness made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he did make such statement. C. S. U. C. c. 22, s. 214.

How far a party may discredit his own witness.

PUBLIC DOCUMENTS, &C., AS EVIDENCE.

*Official Documents.*

**28.** In every case in which the original record could be received in evidence, a copy of any official or public document in this Province, purporting to be certified under the hand of the proper officer, or person in whose custody such official or public document is placed, or a copy of any document, by-law, rule, regulation or proceeding, or a copy of any entry in any register or other book of any corporation, created by charter or statute in this Province, purporting to be certified under the seal of such corporation, and the hand of the Presiding Officer or Secretary thereof, shall be receivable in evidence of any particular, in any Court of Justice, or before any legal tribunal, or the Legislative Assembly, or any Committee thereof respectively, or in any judicial proceeding, without any proof of the seal of such corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without any further proof thereof. C. S. C. c. 80, s. 5.

How public or official documents proved.

**29.** Wherever any book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other statute exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person having by law or by consent of parties, authority to hear, receive and examine evidence, provided it be proved that it is an examined copy or extract, or that it purports to be signed and certified as a true copy or extract by the officer to whose custody the original has been entrusted. C. S. U. C. c. 32, s. 6.

Copies of public books or documents admissible in evidence.

**2.** Such officer shall furnish such certified copy or extract to any person applying for the same at a reasonable time, upon his paying therefor a sum not exceeding ten cents for every folio of one hundred words. C. S. U. C. c. 32, s. 7.

And if required, copies to be delivered

[C. S. U. C. c. 32, s. 8, *is as follows* :—

False certificate.

8. If any officer authorized or required by this Act, or by any law or usage in force in Upper Canada, to furnish any certified copies or extracts, wilfully certifies any document to be a true copy or extract, knowing that the same is not a true copy or extract, he is guilty of a misdemeanor, and shall, upon conviction, be imprisoned for any term not exceeding eighteen months. 16 V. c. 19, s. 10.]

### *Signatures of Judges.*

Judicial notice to be taken of signatures of Judges, etc.

**30.** All Courts, Judges, Justices, Masters in Chancery, Masters of Courts, Clerks of Courts, Commissioners judicially acting, and other judicial officers in this Province, shall take judicial notice of the signature of any of the Judges of the Superior, Circuit, or County Courts in Ontario or in Quebec, provided such signature is appended or attached to any decree, order, certificate, affidavit, or judicial or official document. C. S. C. c. 80, s. 6.

### *Foreign Judgments.*

Foreign judgments, etc., how proved.

**31.** Any judgment, decree or other judicial proceeding, recovered, made, had or taken in the Supreme Court of Judicature in England, or in any of the Superior Courts of Law, Equity or Bankruptcy in Ireland or Scotland, or in any Court of Record in Quebec, or in any Court of Record of the United States, or of any State of the United States of America, may be proved in any suit, action or proceeding, either at Law or Equity in Ontario, in which proof of any such judgment, decree or judicial proceeding may be necessary or required, by an exemplification of the same under the seal of the said Courts respectively, without any proof of the authenticity of such seal, or other proof whatever, in the same manner as any judgment, decree, or similar judicial proceeding of any of the Superior Courts of Common Law or Equity in Ontario may be proved by an exemplification thereof in any judicial or other proceeding in the said last mentioned Courts respectively. C. S. C. c. 80, s. 1.

### *Notarial Documents.*

Notarial acts in Quebec admissible.

**32.** A notarial copy of any notarial act or instrument in writing made in Quebec, before a Notary or Notaries, filed, enrolled or enregistered by such Notary or Notaries, shall be receivable in evidence in any judicial or other proceeding either at Law or in Equity in Ontario, in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved. C. S. C. c. 80, s. 2.

How im each-

**33.** Such notarial copy may be rebutted or set aside by proof that there is no such original, or that the notarial copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may,

by the law of Quebec, be taken before a Notary or Notaries, or be filed, enrolled or enregistered by a Notary or Notaries in Quebec. C. S. C. c. 80, s. 3.

*Protests of Bills and Notes.*

**34.** All protests of bills of exchange and promissory notes shall be received in all Courts as *prima facie* evidence of the allegations and facts therein contained. C. S. C. c. 57, s. 6. Protests *prima facie* evidence.

**35.** Any note, memorandum or certificate at any time made by one or more Notaries Public either in Ontario or Quebec, in his own handwriting or signed by him at the foot of or embodied in any protest, or in a regular register of official acts kept by him, shall be presumptive evidence in Ontario of the fact of any notice of non-acceptance or non-payment of any promissory note or bill of exchange having been sent or delivered, at the time and in the manner stated in such note, certificate or memorandum. C. S. C. c. 57, s. 7. Certificate of notaries to be presumptive evidence.

**36.** The production of any protest on any promissory note or bill of exchange, under the hand or seal of any one or more Notaries Public, either in Ontario or Quebec, in any Court in Ontario, shall be presumptive evidence of the making such protest. C. S. C. c. 57, s. 8. Production of protest to be presumptive evidence that protest was made.

*Certain Statutes.*

**37.** Any copy of the Statutes and Ordinances of the late Province of Lower Canada, printed and published by the printer duly authorized to print and publish the same by Her Majesty, or by any of Her Royal Predecessors, shall be received as conclusive evidence of the several Statutes made and enacted prior to the Union of the Provinces of Upper and Lower Canada by the Legislature of the Province of Lower Canada, and of the tenor of such Statutes and Ordinances, in any Court of civil jurisdiction in Ontario. C. S. C. c. 5, s. 14 (1). Copies of Acts of L. C. printed by Queen's Printer to be conclusive evidence thereof.

[C. S. C. c. 5, s. 14 (1), also enacts that a similar copy shall be conclusive evidence of such Statutes and Ordinances in Courts of criminal jurisdiction in Ontario.]

*Affidavits, &c., made out of Ontario.*

**38.** Oaths, affidavits, affirmations or declarations administered, sworn, affirmed or made out of the Province of Ontario, before any Commissioner authorized to administer oaths in the Supreme Court of Judicature in England, or before a Judge of the Supreme Court of Judicature in England, or of the Court of Session or the Justiciary Court in Scotland, or in the High Court of Chancery, or the Courts of Queen's Bench, Com- Affidavits to be used in Ontario may be made before certain functionaries in the United Kingdom or foreign parts.



mon Pleas, or Exchequer, in Ireland, or before a Judge of any of the County Courts in Great Britain or Ireland, within his County, or before any Notary Public certified under his hand and official seal, or before the Mayor or Chief Magistrate of any City, Borough or Town corporate in Great Britain or Ireland, or in any Colony of Her Majesty without Canada, or in any foreign country, and certified under the common seal of such City, Borough, or Town corporate, or before a Judge of any Court of Record or of supreme jurisdiction in any Colony without Canada belonging to the Crown of Great Britain, or any dependency thereof, or in any foreign country, or, if made in the British Possessions in India, before any Magistrate or Collector certified to have been such under the hand of the Governor of such Possession, or, if made in Quebec, before a Judge or Prothonotary of the Superior Court or Clerk of the Circuit Court, or before any Consul, Vice-Consul, or Consular Agent of Her Majesty exercising his functions in any foreign place, or before a Commissioner authorized by the laws of Ontario to take affidavits in and for any of the Courts of Record of the Province, for the purposes of and in or concerning any cause, matter or thing depending or in any wise concerning any of the proceedings to be had in the said Courts, shall be as valid and effectual and shall be of like force and effect to all intents and purposes as if such oath, affidavit, affirmation or declaration had been administered, sworn, affirmed or made in this Province before a Commissioner for taking affidavits therein, or other competent authority of the like nature. 34 V. c. 14, s. 4; 40 V. c. 7, *Sched. A* (94).

Seal and signature to such affidavits need not be proved.

**39.** Any document purporting to have affixed, impressed or subscribed thereon or thereto the signature of any such Commissioner, or the signature and official seal of any such Notary Public, or Prothonotary, or the seal of the Corporation, and the signature of any such Mayor or Chief Magistrate or Governor as aforesaid, or the seal and signature of any such Judge, Consul, Vice-Consul, or Consular Agent in testimony of any such oath, affidavit, affirmation or declaration having been administered, sworn, affirmed or made by or before him, shall be admitted in evidence without proof of any such signature, or seal and signature, being the signature or the seal and signature of the person whose signature or seal and signature the same purport to be, or of the official character of such person. 34 V. c. 14, s. 5; 40 V. c. 7, *Sched. A* (95).

Informal headings, etc., not to invalidate.

Rev. Stat. c. 63.

**40.** No informality in the heading, or other formal requisites to any affidavit, declaration or affirmation, made or taken before any Commissioner or other person authorized to take affidavits under *The Act respecting Commissioners for taking Affidavits and Affirmations*, or under this Act, shall be any objection to its reception in evidence, if the Court or Judge before whom it is tendered thinks proper to receive it. 34 V. c. 14, s. 7.

*Proof of Wills.*

**41.** In any action at Law or suit in Equity where, according to the existing law exclusive of the provisions contained in this Act, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, the party intending to establish in proof such devise or other testamentary disposition, may give notice to the opposite party ten days at least before the trial or other proceeding in which the said proof is intended to be adduced, that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition, the probate of the will or letters of administration with the will annexed, or a copy thereof, stamped with the seal of the Surrogate Court granting the same, or with the seal of the Court of Chancery, where the probate or letters of administration were granted by the former Court of Probate for Upper Canada; and in every such case the probate or letters of administration or copy thereof, respectively stamped as aforesaid, shall be sufficient evidence of such will, and of its validity and contents notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, under "*The Surrogate Courts Act*," unless the party receiving such notice within four days after such receipt, gives notice that he disputes the validity of such devise or other testamentary disposition. C. S. U. C. c. 16, s. 51; C. S. U. C. c. 32, s. 9; 40 V. c. 7, *Sched. A* (96).

In actions concerning real estate, probate, etc., to be *prima facie* evidence of will, &c., after certain notice, save where its validity is put in issue.

Rev. Stat. c. 46.

**42.** In every case in which in any such action or suit the original will is produced and proved, the Court or Judge before whom such evidence is given may direct by which of the parties the costs thereof shall be paid. C. S. U. C. c. 16, s. 52; C. S. U. C. c. 32, s. 10.

As to costs of proving a will in any action, &c.

**43.** In case of the death of any person in any of Her Majesty's Possessions out of Ontario, after having made a will sufficient to pass real estate in Ontario, and whereby any such estate has been devised, charged or affected, and in case such will has been duly proved in any Court having the proof and issuing probate of wills in any of such Possessions, and remains filed in such Court, then in case notice of the intention to use such probate or certificate in the place of the original will, is given to the opposite party in any such proceeding one month before the same is to be so used, the production of the probate of the will, or a certificate of the Judge, Registrar or Clerk of such Court, that the original is filed and remains in the Court, and purports to have been executed before two witnesses, shall in any proceeding in any Court of Law or Equity in Ontario, concerning such real estate, be sufficient *prima facie* evidence of such will and the contents thereof, and of the same having been executed so as to pass real estate, without the production

Proof in the case of will of real estate filed in Courts in other British possessions.

of the original will ; but such probate or certificate shall not be used if, upon cause shown before any such Court, or any Judge thereof, such Court or Judge finds any reason to doubt the sufficiency of the execution of such will to pass such real estate as aforesaid, and makes a rule or order disallowing the production of such probate. C. S. U. C. c. 32, s. 11.

Certificate to be *prima facie* evidence.

**44.** The production of the certificate, in the last preceding section mentioned, shall be sufficient *prima facie* evidence of the facts therein stated, and of the authority of the Judge, Registrar or Clerk, without any proof of his appointment, authority or signature. C. S. U. C. c. 32, s. 12.

### *Copies of Registered Instruments.*

Registered instrument *prima facie* evidence.

**45.** An exemplification or a certified copy of any registered instrument or memorial under the hand and seal of office of the Registrar in whose office the same is registered shall be received as *prima facie* evidence, in every Court of Law or Equity in Ontario, of the original of such instrument or memorial, except in the cases provided for in the next section. 31 V. c. 20, s. 21. See also *Rev. Stat. c. 111, s. 24.*

Certified copies of registered instruments may be used instead of originals, after notice.

*Rev. Stat. c. 111.*

**46.** In any action at Law, or suit in Equity, where, but for this Act, or "*The Registry Act*," it would be necessary to produce and prove any original instrument which has been registered in order to establish such instrument and the contents thereof, the party intending to prove any such original instrument may give notice to the opposite party ten days at least before the trial, or other proceeding in which the said proof is intended to be adduced, that he intends at the said trial or other proceeding to give in evidence, as proof of such original instrument, a copy thereof certified by the Registrar, under his hand and seal of office, and in every such case the copy so certified shall be sufficient evidence of the original instrument, and of its validity and contents, unless the party receiving such notice within four days after such receipt, gives notice that he disputes the validity of such original instrument, in which case the costs of producing and proving such original may be ordered by the Court or Judge to be paid by any or either of the parties as may be deemed right. 31 V. c. 20, ss. 49 & 51.

Exception.

Costs in such cases.

Meaning of "instrument," *Rev. Stat. c. 111, s. 2.*

**47.** The word "instrument" in the two next preceding sections shall have the meaning assigned to the word "instrument" in the second section of "*The Registry Act*."

### *Copies of other written Instruments.*

Copies of certain documents may be admitted as evidence on certain conditions.

**48.** In any action, suit or proceeding at Law or in Equity, in the cases of telegraphic messages, letters, shipping bills, bills of lading, delivery orders, receipts, accounts and other written instruments used in business and other transactions, where accord-

ing to the existing rule of law, exclusive of the provisions contained in this Act, it would be necessary to produce and prove the original document, the party intending to establish in proof the contents of such original document may give notice to the opposite party ten days at least before the trial or other proceeding in which the said proof is intended to be adduced, that he intends at the said trial or other proceeding to give in evidence as proof of such contents, an instrument purporting to be a copy of such document.

2. Such copy may then be inspected by the opposite party at some convenient time and place; and in every such case such copy shall without further proof be sufficient evidence of the contents of such original document, and be accepted and taken in lieu of such original, unless the party receiving such notice within four days after the time mentioned therein for such inspection gives notice that he intends to dispute the correctness or genuineness of such copy at the said trial or proceeding, and to require proof of the original; and the Court or Judge, before whom such question is raised may direct by which of the parties the costs which may thereupon attend any production or proof of the original document, according to the rules of evidence heretofore existing, shall be paid. 36 V. c. 11, s. 1; 40 V. c. 7, *Sched. A* (97). Proviso.

#### *Miscellaneous Provisions.*

49. In suits at Law or in Equity, it shall not be necessary to produce any evidence which by the first section of *The Act to amend the Law of Vendor and Purchaser and to Simplify Titles*, is dispensed with as between vendor and purchaser; and the evidence therein declared to be sufficient as between vendor and purchaser shall be *prima facie* sufficient for the purposes of such suits. 39 V. c. 29, s. 7; *See also Rev. Stat. c. 109, s. 2.* Evidence in actions or suits.  
Rev. Stat. c. 109, s. 1.

50. It shall not be necessary to prove by the attesting witness, any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto. C. S. U. C. c. 22, s. 212. Attesting witness need not be called where none was required by law.

51. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine, shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same, may be submitted to the Court and jury, as evidence of the genuineness or otherwise of the writing in dispute. C. S. U. C. c. 22, s. 213. Comparison of disputed writing with genuine.

52. Whenever any document is received in evidence by virtue of this Act, the Court, Judge, Commissioner or other person acting or officiating judicially, who admits the same, may, in When instruments offered in evidence



may be impounded.

its or his discretion or at the request of any party against whom the same has been admitted in evidence, direct the same to be impounded and kept in the custody of the Master or other officer of the Court, or some other proper person, for such period and subject to such conditions as to the Court or person who admits the document seems meet, or until further order touching the same has been made either by such Court or by the Court to which such Master or other officer belongs, or by the person or persons who constituted such Court, or by some one of the Judges of the Superior or County Courts (as the case may be), on application made for that purpose. C. S. C. c. 80, s. 8; C. S. U. C. c. 101, s. 2.

[See also *The Act to amend the Law of Vendor and Purchaser and to Simplify Titles*, *Rev. Stat. c. 109*.]

## CHAPTER. 63.

### An Act respecting Commissioners for taking Affidavits and Affirmations.

Commissioners for taking affidavits  
in Ontario, ss. 1-7.  
Commissioners without Ontario, s. 8.

Commissioners for taking affidavits  
in Quebec for use in Ontario, s. 9.  
Authority of Commissioners, s. 10.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### COMMISSIONERS WITHIN ONTARIO.

The Judges of the Superior Courts may appoint Commissioners for taking affidavits.

1. The Chief Justice and Justices of the Court of Queen's Bench, or any two of them, of whom the Chief Justice shall be one, and the Chief Justice and Justices of the Court of Common Pleas, or any two of them, of whom the Chief Justice thereof shall be one, or in the event of the death or absence from the Province of the Chief Justice of either of said Courts respectively, then the remaining Justices of the Court of which the Chief Justice has died or is absent, or the Judges of the Court of Chancery as heretofore, may, by a commission or commissions under the seal of the said Courts respectively, from

time to time empower such and so many persons as they think fit and necessary in the several Counties within Ontario or in any Temporary Judicial District, Provisional Judicial District, Territorial District, or Provisional County, or in any other territory, not being part of any such District or of any County, to take and receive all and every such affidavits and affirmations (in cases where by law an affirmation is allowed) as any person or persons desire to make in or concerning any cause, matter or thing depending, or in any wise concerning any of the proceedings in the said respective Courts. C. S. U. C. c. 39, s. 1 ; C. S. U. C. c. 12, s. 13 ; 36 V. c. 5, s. 1.

**2.** The affidavits and affirmations aforesaid shall be of the same force as if taken in open Court, and shall be filed in the office of the Court in which the same are taken, and may be read and made use of in the said Court as other affidavits or affirmations taken in such Court. C. S. U. C. c. 39, s. 2.

To be of the same force as if taken in open Court.

**3.** Every Commissioner for taking affidavits appointed by either of the said Superior Courts of Common Law or by the Court of Chancery, shall be deemed to be an officer of all the Superior Courts. C. S. U. C. c. 39, s. 10.

Each Commissioner to be an officer of all the Courts.

**4.** Any of the said Superior Courts may revoke the Commission of any such Commissioner, whether the Commission was issued by such Court, or by one of the other Courts, and such revocation shall be notified to the other Courts, and shall operate as a revocation in regard to all the Courts and for all purposes. C. S. U. C. c. 39, s. 11.

Any of the other Courts may revoke the Commission of any Commissioner.

**5.** All such Commissioners appointed for any Union of Counties, and resident within the Junior County, at the time of the separation thereof from such Union, may exercise the same powers within such Junior County to take and receive affidavits and affirmations, as if they had received their commissions or appointments respectively for such Junior County at the time of the separation of such Union of Counties. 31 V. c. 11, s. 1.

Commissioners for United Counties resident in Junior County may, after separation, act for Junior County.

**2.** No such Commissioner shall have or exercise any such powers by virtue of such commission, save in such Junior County. 31 V. c. 11, s. 2.

And for Junior County only.

**6.** The Judges and Clerks of the several County Courts respectively, may take all affidavits and affirmations required to be taken in their respective Courts. C. S. U. C. c. 39, s. 7.

The Judges and Clerks of County Courts may take affidavits.

#### COMMISSIONERS OUT OF ONTARIO.

**7.** The Lieutenant-Governor may, by a commission or commissions under his hand and seal, from time to time empower such and so many persons as he thinks fit and necessary to administer oaths and take and receive affidavits, declarations

Lieutenant-Governor may appoint Commissioners for taking affidavits.

vits, etc., with- and affirmations without this Province in or concerning any  
out Ontario. cause, matter or thing depending or in anywise concerning  
any of the proceedings to be had in the Courts of Queen's  
Bench and Common Pleas, and the Court of Chancery,  
or any other Court of Law or Equity of Record in this Pro-  
vince, whether now existing or hereafter to be constituted; and  
every oath, affidavit, declaration, or affirmation taken or made  
as aforesaid shall be as valid and effectual, and shall be of the  
like force and effect to all intents and purposes as if such oath,  
affidavit, declaration or affirmation had been administered,  
taken, sworn, made or affirmed before a Commissioner for  
taking affidavits within the Province, or other competent  
authority of the like nature. 34 V. c. 14, s. 2; 37 V. c. 7, s. 71.

Style of Com- 2. The Commissioners so appointed shall be styled "Com-  
missioners. missioners for taking affidavits in and for the Courts in  
Ontario." 34 V. c. 14, s. 3.

Judges of the 8. The Chief Justice and any one of the Justices of the  
Superior Courts of Law may appoint in the event of the death or absence from the Province of the  
Commissioners in Quebec. Chief Justice, any two of the Justices of the said Courts re-  
spectively, may, by a commission or commissions under the  
seal of the Court, from time to time empower such and so  
many persons as they think fit and necessary to take and  
receive affidavits in the Province of Quebec in or concerning  
any cause, matter or thing depending, or in anywise concern-  
ing any of the proceedings to be had in the said Courts, or in  
any other Court of Law of Record in Ontario; and every affida-  
vit taken as aforesaid shall be of the same force as if taken in  
the particular Court in which the same is entitled or intended  
to be used. C. S. C. c. 79, s. 1.

#### AUTHORITY OF COMMISSIONERS, &C.

The Commis- 9. Every Commissioner heretofore or hereafter appointed  
sioners, &c., for taking affidavits and affirmations within this Province, and  
may take affi- every person heretofore or hereafter authorized to take affidavits  
davits in all to be used in any Court of this Province, may take affidavits and  
Courts or in affirmations which any person desires to make in or concerning  
matters pend- any suit or proceeding pending in any of the Superior Courts  
ing before a of Law or Equity, (whether the Court for which he was ap-  
Judge. pointed or not), and in the Court of Appeal, and in all the  
County and Division Courts or before a Judge or Judges of  
any of said Courts, and in or concerning any application or  
matter made or pending before any Judge of any Court in the  
Province which by any Statute now or hereafter in force in  
Ontario, and within the legislative authority of the Province,  
such Judge is authorized to hear and determine, or in which he  
is authorized to make any order, although such application or  
matter be not made or pending in any Court. C. S. U. C. c. 39,  
ss. 8 & 9; 40 V. c. 8, ss. 24 & 25.

CHAPTER 64.

An Act respecting the Costs of Arbitrations.

Interpretation, s. 1.	Taxation of costs, ss. 6-9.
Fees where Arbitrators not professional men, s. 2.	Agreements as to fees, s. 10.
Fees where professional men, s. 3.	Penalty for asking unauthorized fees, s. 11.
Fees to witnesses, s. 4.	Action for fees, s. 12.
Costs of postponements, s. 5.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. In the construction of this Act,

Interpretation:
- “Arbitrator” shall include all Arbitrators, every Umpire and every Referee in the nature of an Arbitrator ; and

“Award” shall include every umpirage and every certificate in the nature of an award. 29 V. c. 32, s. 12.
2. No Arbitrator, who is not by profession and calling a Barrister, Attorney, Engineer, Architect, or Provincial Land Surveyor, shall be entitled to demand or take for his attendance and services as an Arbitrator any greater fees than are hereinafter set down in Schedule A to this Act. 29 V. c. 32, s. 1.

Fees to arbitrators not being barristers, architects, etc.
3. No Arbitrator, who is by profession and calling a Barrister, Attorney, Engineer, Architect, or Provincial Land Surveyor, shall be entitled to demand or take for his attendance and services as such Arbitrator any greater fees than are hereinafter set down in Schedule B to this Act. 29 V. c. 32, s. 2.

Fees to arbitrators being barristers, architects, etc.
4. No greater fees shall be taxed or allowed to any persons called as witnesses before any Arbitrator or Umpire than would be taxed and allowed to the same persons in an ordinary suit before a Court having jurisdiction over the subject matter of reference. 29 V. c. 32, s. 3.

Fees to witnesses.
5. Wherever, at any meeting of Arbitrators, of which due notice has been given to the respective parties, no proceedings

In case of absence of parties, or



postponement at their request, costs of meeting to be taxed against them.

are taken in consequence of the absence of either of the parties, or because a postponement is made by the Arbitrators at the request of either party to some future day, the Arbitrators shall make up an account of the costs, charges and disbursements of such meeting, including the proper charges for their own attendance and that of any witnesses, and of the counsel or attorney of the party present, or not desiring such postponement, and shall charge the amount thereof, or of the disbursements, against the party making default in attending, or at whose request the postponement is made (unless the Arbitrators, under the special circumstances of the case, think that it would be unjust to charge such disbursements, or costs, charges and disbursements against him), and such last named party shall be bound to pay the same to the other party, whatever may be the event of the award and reference, and the Arbitrators shall, in the award, make any direction or adjudication necessary for that purpose, and if such sum is payable by the party in whose favour the award is otherwise made, it may be set off against, and deducted from, any amount awarded in favour of that party. 29 V. c. 32, s. 4.

Taxing of costs on arbitrations.

6. Either party to an arbitration shall be entitled to have the costs thereof taxed, including the fees to the Arbitrators, by the Master of any of the Superior Courts at Toronto having jurisdiction of the cause; or in cases where the Arbitrators determine the amount of the costs, or where there is no cause in Court, by the Master to be named in a Judge's order, which may be granted for that purpose on a proper application on affidavit setting forth the facts. 29 V. c. 32, s. 5.

Taxing power restricted as to amounts.

7. The Master shall in no case tax higher fees than are set down in this Act, but, upon reasonable grounds established before him upon affidavit, he may in taxation reduce the maximum mentioned in the Schedules, but not below the minimum, having always regard to the length of the arbitration and to the value of the matter in dispute, and the difficulty of the questions to be decided; but he shall not tax more than one counsel fee to either party for any meeting of the Arbitrators. 29 V. c. 32, s. 6.

Costs of award.

8. The Master may tax and allow a reasonable sum for the preparation and drawing up of the award. 29 V. c. 32, s. 7.

Revision of taxation.

9. A revision of taxation may at any time be granted upon application to the Court or a Judge, reasonable ground being shown. 29 V. c. 32, s. 8.

Agreement to refer may include limitation of fees to arbitrators.

10. The parties who refer any matter in difference between them to arbitration, whether any cause suit or action is pending between them or not, may agree, by writing, signed by them, or by making such agreement a part of their submission, to pay to the Arbitrator or Arbitrators, if more than one, such fees or

sums for each day's attendance, or such gross sums for their taking upon themselves the burden of the reference and making the award, as the said parties see fit, and in every such case the fees and sums so agreed upon shall be substituted for those set down and authorized in the Schedules to this Act, and shall be taxed and allowed by the Master accordingly. 29 V. c. 32, s. 9.

11. If any Arbitrator, after taking upon himself the burden of any reference, and after hearing the parties, their counsel and attorneys, or evidence (as the case may be), refuses or delays, after the expiration of one calendar month from the close of the proceedings before him, to make, execute and deliver his award upon the matters submitted, until a larger sum is paid to him for his fees than is by this Act permitted, and may be taxed, or receives for such his award, or for his fees as Arbitrator, any such larger sum, he shall, for each and every such refusal or delay, forfeit and pay to the party who has demanded and was entitled to obtain the award, or who has paid to the Arbitrator any such larger sum in order to obtain, or as a consideration for having obtained such award, treble the amount of the whole sum demanded by the Arbitrator and to obtain payment whereof he has refused or delayed as aforesaid to make, execute or deliver his award, or treble the sum actually paid to him for his award, and received by him contrary to the provisions of this Act, such treble sum or sums to be recoverable with full costs in an action of debt to be brought in either of the Superior Courts of Common Law. 29 V.c. 32, s. 10.

Provision in case of refusal or delay to make award, etc.

Penalty and mode of recovery

12. In all cases where an award has heretofore been or is hereafter made, the Arbitrator making the same may maintain an action for his fees upon such award, after the same have been taxed, which taxation may be made at the instance of the Arbitrator, upon notice to any party to the reference, against whom he may afterwards bring such action ; and in the absence of an express agreement in respect thereof, the Arbitrator may maintain such action, after such taxation, against all the parties to such reference, jointly or severally. 29 V. c. 32, s. 11.

Arbitrator to have action for fees taxed to him.

SCHEDULE "A."

(Section 2.)

For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the request of either party, not less than .....	\$ 2 00
Nor more than .....	4 00
For every day's sitting, to consist of not less than six hours, not less than .....	5 00
Nor more than .....	10 00
For every sitting not extending to six hours (fractional parts	

of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings, at the rate of not less than .....	\$1 00
Nor more than .....	1 50

## SCHEDULE "B."

(Section 3.)

For every meeting where the cause is not proceeded with, but an enlargement or postponement is made at the request of either party, not less than .....	4 00
Nor more than .....	8 00
For every day's sitting, to consist of not less than six hours, not less than .....	10 00
Nor more than .....	20 00
For every sitting not extending to six hours (fractional parts of hours being excluded) where the arbitration is actually proceeded with, for each hour occupied in such proceedings, at the rate of not less than .....	2 00
Nor more than .....	3 00

## CHAPTER 65.

### An Act respecting the Costs of Levying Distresses for Small Rents and Penalties.

Fees which may be charged, s. 1.	sonally made levy, s. 8.
Penalty for exacting unauthorized fees, ss. 2-6.	Copy of charges to be given with distress, s. 9.
Penalty for preferring unfounded complaints, s. 7.	Right of action unaffected, s. 10.
Landlord not liable unless he per-	Forms of Orders, &c., s. 11.
	Schedules, p. 798.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Fees to be charged, and services for which the same may be charged.

1. No person making any distress for rent or for any penalty when the sum demanded and due does not exceed the sum of eighty dollars, in respect of such rent or penalty, and no person employed in making such distress, or doing any act in the course of such distress, or for carrying the same into effect,

shall take or receive, from any person or out of the produce of the chattels distrained upon and sold, any other costs in respect of such distress, than such as are set forth in Schedule A hereunto annexed, and no person shall make any charge for anything mentioned in the said Schedule, unless such thing has been really done. C. S. U. C. c. 123, s. 1

2. If any person offends against any of the provisions in the foregoing section contained, the party aggrieved thereby may apply to any Justice of the Peace for the County, City or Town where the offence was committed, for the redress of such grievance, whereupon such Justice shall summon the person complained of to appear before him, at a reasonable time to be fixed in the summons, and the Justice shall examine into the matter of such complaint, and also hear the defence of the person complained of; and if it appears to the Justice that the person complained of has so offended, such Justice shall order and adjudge treble the amount of the money unlawfully taken and full costs to be paid by the offender to the party aggrieved. C. S. U. C. c. 123, s. 2. Penalty for extortion.

3. In case of non-payment of any money or costs so adjudged to be paid, the Justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party convicted, rendering to him the overplus, if any. C. S. U. C. c. 123, s. 3. How penalty to be levied.

4. In case no sufficient distress can be had, the Justice shall by warrant under his hand and seal, commit the party to the Common Gaol within the limits of his jurisdiction, there to remain until the order or judgment is satisfied. C. S. U. C. c. 123, s. 4. Commitment.

5. The Justice, at the request of the party complaining, or complained against, may summon all persons as witnesses, and may administer an oath to them touching the matter of such complaint, or the defence against it. C. S. U. C. c. 123, s. 5. Justices may summon witnesses.

6. If any person so summoned neglects to obey the summons without any reasonable or lawful excuse, or refuses to be examined upon oath (or affirmation, as the case may be), he shall forfeit a sum not exceeding eight dollars, to be adjudged, levied and paid in such manner, and by such means, and with such power of commitment, as hereinbefore directed with respect to orders and judgments made or given at the instance of original complainants, excepting as regards the form thereof, which may be made in such form as the Justice thinks fit. C. S. U. C. c. 123, s. 6. Penalty for disobeying.

7. If the Justice finds that the complaint of the party aggrieved is not well founded, he may order and adjudge costs, not exceeding four dollars, to be paid by the complainant to For preferring unfounded complaint.



the party complained against, which order shall be carried into effect and levied and paid in the manner hereinbefore directed with respect to orders and judgments made or given at the instance of original complainants. C. S. U. C. c. 123, s. 7.

Justices not to make orders against landlord, etc.

8. Nothing hereinbefore contained shall empower the Justice to make any order or judgment against the landlord for whose benefit any such distress has been made, unless the landlord personally levied the distress. C. S. U. C. c. 123, s. 8.

Persons levying distress to give copy of charges to party distrained.

9. Every person who makes and levies any distress shall give a copy of demand, and of all the costs and charges of the distress, signed by him, to the person on whose goods and chattels the distress is levied, although the amount of the rent or penalty demanded exceeds the sum of eighty dollars. C. S. U. C. c. 123, s. 11. *See also Rev. Stat. c. 136, s. 16.*

Party aggrieved by distress for rent not barred of his action, etc.

10. No person aggrieved by any distress for any rents or penalty, or by any proceedings had in the course thereof, or by any costs or charges levied upon him in respect of the same, shall be barred from any suit or remedy which he might have had before the passing of this Act, excepting so far as any complaint preferred under this Act has been determined by the order and judgment of the Justice before whom it has been heard and determined; and in case the matter of such complaint is made the subject of an action, the order and judgment may be given in evidence, under the plea of the general issue. C. S. U. C. c. 123, s. 9.

Orders and judgments to be made according to Schedule annexed.

11. Orders and judgments on such complaints shall be made in the words or to the effect of the forms given in Schedule B herunto annexed; and may be proved before any Court, by proof of the signature of the Justice to such orders and judgments. C. S. U. C. c. 123, s. 10.

## SCHEDULE "A."

### (Section 1.)

#### COSTS AND CHARGES ON DISTRESSES FOR SMALL RENTS AND PENALTIES.

Levying distresses under eighty dollars .....	\$1 00
Man keeping possession, per diem.....	0 75
Appraisement, whether by one appraiser or more— <i>two cents in the dollar on the value of the goods;</i>	
If any printed advertisement, not to exceed in all.....	1 00
Catalogues, sale and commission, and delivery of goods— <i>five cents in the dollar on the net produce of the sale.</i>	

## SCHEDULE "B."

(Section 11.)

## FORM 1.

FORM OF THE ORDER AND JUDGMENT OF THE JUSTICE BEFORE WHOM  
COMPLAINT IS PREFERRED WHEN THE ORDER AND JUDGMENT IS FOR  
THE COMPLAINANT.

In the matter of complaint of A. B. against C. D., for the breach of the provisions of the Act Chapter Sixty-five of *The Revised Statutes of Ontario*, entitled "*An Act respecting the Costs of levying Distresses for small Rents and Penalties*," I, E. F., a Justice of the Peace for the  
the sum of \_\_\_\_\_, do order and adjudge that the said C. D. shall pay to A. B. \_\_\_\_\_, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B., under a distress for (*as the case may be*), and the further sum of \_\_\_\_\_ for costs in this complaint.

(Signed)

E. F.

## FORM 2.

FORM OF THE ORDER AND JUDGMENT OF THE JUSTICE WHEN HE DIS-  
MISSES THE COMPLAINT AS UNFOUNDED, WITH OR WITHOUT COSTS, AS  
THE CASE MAY BE.

In the matter of complaint of A. B. against C. D., for the breach of the provisions of the Act Chapter Sixty-five of *The Revised Statutes of Ontario*, entitled "*An Act respecting the Costs of levying Distresses for small Rents and Penalties*," I, E. F., a Justice of the Peace in and for the  
\_\_\_\_\_, do order and adjudge that the complaint of the said A. B. is unfounded; (*if costs are given add* and I do further order and adjudge that the said A. B. shall pay unto the said C. D. the sum of \_\_\_\_\_.)

(Signed)

E. F.

## CHAPTER 66.

## An Act respecting Writs of Execution.

---

Short title, s. 1.	1. Equity of redemption of lands, ss. 35-38.
Goods exempt from seizure, ss. 2-6.	2. Contingent interests, s. 39.
Issue renewal, &c., of writs of execution, ss. 7-18.	Sales against executors, s. 40.
Inventory and sale of goods, s. 19.	Notice of sale of lands, ss. 41-43.
What may be sold under <i>fi. fa.</i> goods:	Poundage and costs, ss. 44-52.
1. Stocks in certain companies, ss. 20-26.	Writs of <i>Ca. Sa.</i> , s. 53.
2. Equity of redemption of goods mortgaged, s. 27.	Writs of execution to fix bail, s. 54.
3. Money and securities, ss. 28-32.	Discharge of execution debtors from custody, s. 55.
Priority of executions, s. 33.	Execution in Detinue, s. 56.
Return of goods unsold, s. 34.	Rules to return writs, ss. 57-71.
What may be sold under <i>fi. fa.</i> lands:	Enforcement of decrees &c., in Chancery, and Rules, &c., at Law, by execution or attachment, s. 72.
	Writs of Sequestration, s. 73.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.      1. This Act may be cited as "*The Execution Act.*"

## EXEMPTION.

Certain chattels exempt from seizure.      2. The following chattels are hereby declared exempt from seizure under any writ, in respect of which this Province has legislative authority, issued out of any Court whatever in this Province, namely:

Bedding.      1. The bed, bedding and bedsteads in ordinary use by the debtor and his family;

Apparel.      2. The necessary and ordinary wearing apparel of the debtor and his family;

Furniture.      3. One stove and pipes, and one crane and its appendages, and one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk jug, one tea pot, six spoons, all spinning wheels and weaving looms in domestic use, and ten volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use;

4. All necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of forty dollars; Provisions.

5. One cow, four sheep, two hogs, and food therefor, for thirty days; Animals.

6. Tools and implements of, or chattels ordinarily used in, the debtor's occupation to the value of sixty dollars. 23 V. c. 25, s. 4 (1-6). *See* 23 V. c. 25, s. 3. Tools.

7. Bees reared and kept in hives to the extent of fifteen hives. 28 V. c. 8, s. 2. *See* *Rev. Stat.* c. 96, s. 2. Bees.

3. The said chattels so exempt from seizure as against a debtor shall, after his death, be exempt from the claims of creditors of the deceased, and the widow shall be entitled to retain the said exempted goods for the benefit of herself and the family of the debtor, or, if there is no widow, the family of the debtor shall be entitled to the said exempted goods; and such goods so exempt as aforesaid shall not be liable to seizure under an attachment against the debtor as an absconding debtor. 40 V. c. 8, s. 27. Goods exempted from seizure after death of the debtor to become the property of his widow.  
Absconding debtors.

4. The debtor or his widow or family, or, in the case of infants, their guardian may select out of any larger number the several chattels exempt from seizure under this Act. 23 V. c. 25, s. 6; 40 V. c. 8, s. 28. Debtor may select chattels.

5. Nothing herein contained shall exempt any article enumerated in sub-divisions three, four, five, six and seven of the second section of this Act from seizure in satisfaction of a debt contracted for such identical chattel. 23 V. c. 25, s. 5; 28 V. c. 8, s. 2. Exception.

6. Notwithstanding anything contained in the four next-preceding sections, the various goods and chattels which were, prior to the nineteenth day of May, 1860, liable to seizure in execution for debt, shall, as respects debts contracted before the said day, remain liable to seizure and sale in execution, provided that the writ of execution under which they are seized, has endorsed upon it a certificate, signed by the Judge of the Court out of which the writ issues, certifying that it is for the recovery of a debt contracted before the date above-named. 24 V. c. 27, s. 2. Notwithstanding this Act, goods liable to seizure before the 19th May, 1860, to continue so for debts contracted before that date.

#### ISSUE, RENEWAL, &C., OF WRITS OF EXECUTION.

7. All writs of execution may issue from the offices wherein the judgment has been entered; and in the Superior Courts of Law after the transmission of the judgment roll to the Writ of execution from what office to issue.



principal office, such writs may, at the option of the party entitled thereto, be issued out of such principal office. C. S. U. C. c. 22, s. 246.

Writ to Sheriff of the County where the *venue* is laid may be dispensed with.

8. It shall not be necessary to issue any writ directed to the Sheriff of the County in which the *venue* is laid, but writs of execution may issue at once into any County and be directed to and executed by the Sheriff of any County without reference to the County in which the *venue* is laid, and without any suggestion of the issuing of a prior writ into such County. C. S. U. C. c. 22, s. 247.

It shall still be necessary to sue out execution in the proper County to charge bail.

9. Where at the time this Act takes effect, it is necessary to sue out process of execution against the person into any particular County in order to charge bail, the same shall continue to be necessary notwithstanding anything contained in this Act. C. S. U. C. c. 22, s. 248.

Execution may issue to enforce Judge's order for costs.

10. It shall not be necessary in any proceedings to make a Judge's order, or an order of the Clerk of the Crown and Pleas of the Court of Queen's Bench in Chambers for the payment of costs, a rule of Court, but writs of execution may be issued, in pursuance of the said order, in the same manner, and shall have the same force and effect as if the same had been issued in pursuance of a rule of Court. 36 V. c. 8, s. 60; 37 V. c. 7, s. 46.

Duration of Writs of Execution.

11. Except writs of *capias ad satisfaciendum*, every writ of execution shall bear date and be tested on the day on which it is issued, and, shall remain in force for one year from the teste, (and no longer if unexecuted,) unless renewed, but such writ may, at any time before its expiration, and so from time to time during the continuance of the renewed writ, be renewed by the party issuing it, for one year from the date of such renewal, by being marked in the margin, with a memorandum to the effect following: "*Renewed for one year from the day of*," signed by the Clerk or Deputy

Renewal.

Effect of renewal.

Clerk of the Crown, Clerk of the County Court, or other proper officer, who issued such writ, or by his successor in office; and a writ of execution so renewed shall have the effect and be entitled to priority according to the time of the original delivery thereof to the Sheriff. C. S. U. C. c. 22, s. 249; 27 V. c. 13, s. 2.

Evidence of renewal.

12. The production of a writ of execution, marked as renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed. C. S. U. C. c. 22, s. 250.

When lands not liable unless the judgment exceeds forty dollars.

13. In case any suit of the proper competence of a Division Court is brought in a Superior Court or in a County Court, no execution against lands shall issue unless the amount of the judgment exceeds forty dollars. C. S. U. C. c. 22, s. 251.

**14.** Any person who becomes entitled to issue a writ of execution against goods and chattels may, at or after the time of issuing the same, issue a writ of execution against the lands and tenements of the person liable, and deliver the same to the Sheriff to whom the writ against goods is directed, at or after the time of delivery to him of the writ against goods, and either before or after any return thereof. 31 V. c. 25, s. 1.

Writs against lands may issue at same time as writs against goods

**2.** The Sheriff shall not expose the lands for sale or sell within less than twelve months from the day on which the writ against the lands is delivered to him. 31 V. c. 25, s. 1.

Lands not to be sold within a year.

**15.** No sale shall be had under any execution against lands until after a return of *nulla bona*, in whole or in part, with respect to an execution against goods in the same suit or matter by the same Sheriff. 31 V. c. 25, s. 2.

No sale of lands until return of *nulla bona*.

**16.** No Sheriff shall make any return of *nulla bona*, either in whole or in part, to any writ against goods until the whole of the goods of the execution debtor in his County have been exhausted. 31 V. c. 25, s. 3.

When *nulla bona* not to be returned.

**17.** If the amount authorized to be made and levied under the writ against goods is made and levied thereunder, the person issuing the writ against lands shall not be entitled to the expenses thereof, or of any seizure or advertisement thereunder; and the return to be made by the Sheriff to the writ against lands shall be to the effect that the amount has been so made, and levied, as aforesaid. 31 V. c. 25, s. 4.

If the debt is realized under writ against goods.

**18.** The said writs against lands and goods shall have the same operation and binding effect as heretofore, and the law applicable heretofore to executions shall continue applicable, except so far as variance is requisite, by reason of the enactments hereof. 31 V. c. 25, s. 5.

Writs to have same effect as heretofore.

#### INVENTORY AND SALE OF GOODS.

**19.** Where any goods or chattels are seized in execution under a writ issued out of either of the Superior Courts of Common Law or of any County Court, the Sheriff, his Deputy or officer, who seized the same, shall, on request, deliver to the owner, his agent or servant, an inventory thereof before they are removed from the premises on which they have been so seized; and no Sheriff or other officer shall sell any effects under a writ of execution until he has, previously thereto, given at least eight days' public notice in writing of the time and place of sale at the most public place in the Municipality where such effects have been taken in execution. C. S. U. C. c. 22, s. 253.

Sheriff to deliver inventory to the owner, &c.

## WHAT MAY BE SOLD UNDER EXECUTION AGAINST GOODS.

1. *Stocks in certain Companies.*

Shares and dividends of Shareholders, &c., liable to seizure, &c.

**20.** All shares and dividends of stockholders in any incorporated Bank or other Company in Ontario, having transferable joint stock, shall be held, considered and adjudged to be personal property, and shall be liable as such to *bona fide* creditors for debts, and may be attached, seized and sold under writs of execution issued out of any of Her Majesty's Courts in this Province, in like manner as other personal property may be sold under execution. C. S. C. c. 70, s. 1; 40 V. c. 7, *Sched. A* (98).

Sheriff to serve a copy of the writ on the Company with notice of seizure.

**21.** The Sheriff to whom any such writ of execution, as aforesaid, is addressed, on being informed on behalf of the plaintiff that the defendant has stock in any such incorporated Company, and on being required to seize such stock shall forthwith serve a copy of the writ on such Company with a notice that all the shares which the defendant has in the stock of such Company are seized accordingly; and from the time of such service no transfer of such stock by the defendant shall be valid, unless and until the said seizure has been discharged; and every such seizure, and any sale made under the same, shall include all dividends, premiums, bonuses, or other pecuniary profits upon the shares seized, and the same shall not, after such notice as aforesaid, be paid by such Company to any party, except the party to whom the shares have been sold by the Sheriff, unless and until the seizure is discharged, on pain of paying the same twice. C. S. C. c. 70, s. 3; 40 V. c. 7, *Sched. A* (99).

Stock not to be transferred while under seizure, and sale under seizure to include all dividends, &c.

Provisions for the case of the Company having more than one place where service of process may be legally made upon them.

**22.** If the Company has more than one place where service of process may legally be made upon them, and there is some place where transfers of stock may be notified to and entered by the Company so as to be valid as regards the Company, or where any dividends or profits as aforesaid on stock may be paid other than the place where service of such notice has been made, such notice shall not affect any transfer or payment of dividends or profits duly made and entered at any such other place, so as to subject the Company to pay twice, or to affect the rights of any *bona fide* purchaser, until after the expiration of a period from the time of service sufficient for the transmission of notice of such service by post from the place where it has been made to such other place, which notice it shall be the duty of the Company to transmit by post to such other place. C. S. C. c. 70, s. 4.

Shares to be personal property at the place where found by the Sheriff.

**23.** The shares in the stock of any such Company shall be held to be personal property, found by the Sheriff in the place where notice of the seizure thereof is served as aforesaid. C. S. C. c. 70, s. 5; 40 V. c. 7, *Sched. A* (100).

**24.** Wherever any such share is sold under a writ of execution, the Sheriff, by whom the writ has been executed, shall, within ten days after such sale, serve upon the Company at some place where service of process upon such Company may be made, an attested copy of such writ of execution, with his certificate endorsed thereon, certifying to whom the sale of such share has been by him made, and the person who has purchased the same, and the person so purchasing shall thereafter be a stockholder of the said share, and shall have the same rights, and be under the same obligations as if he had purchased the said share from the proprietor thereof, in such form as may be by law provided for the transfer of stock in such Company; and the proper officer of the Company shall enter such sale as a transfer in the manner by law provided. C. S. C. c. 70, s. 2.

Mode of proceeding to such sale.

**25.** Nothing in this Act shall be construed to impair the effect of any remedy which the plaintiff might, without this Act, have had against any shares of such stock as aforesaid, by attachment or otherwise, but on the contrary, the provisions of the four next preceding sections shall apply to such remedy in so far as they can be applied thereto. C. S. C. c. 70, s. 6.

Saving of all remedies at Common Law

**26.** All corporations, established for the purpose of trade or profit, or for the construction of any work, or for any purpose from which revenue is intended to be derived, shall be deemed incorporated Companies for the purpose of the six next preceding sections of this Act, although they are not called Companies in the Act or charter incorporating them. C. S. C. c. 70, s. 7.

What shall be deemed incorporated companies.

## 2. *Interest of a mortgagor in goods mortgaged.*

**27.** On any writ, precept or warrant of execution against goods and chattels, the Sheriff or other officer to whom the same is directed may seize and sell the interest or equity of redemption in any goods or chattels, including leasehold interests in any lands, of the party against whom the writ has issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure. C. S. U. C. c. 22, s. 260; C. S. U. C. c. 45, s. 13; 40 V. c. 7, *Sched. A* (101).

The interest a mortgagor in goods mortgaged may be sold in execution.

## 3. *Money and securities.*

**28.** The Sheriff or other officer having the execution of any writ of *pieri facias* against goods sued out of either of the Superior Courts of Common Law, or out of any County Court, or of any precept made in pursuance thereof, shall seize any money or bank-notes (including any surplus of a former execu-

Sheriff may seize money and securities for money.



Money seized to be paid over to party taking out the execution.

tion against the debtor), and any cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money, belonging to the person against whose effects the writ of *fiери facias* has issued, and shall pay or deliver to the party who sued out the execution, any money or bank-notes so seized, or a sufficient part thereof, and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money, as a security or securities for the amount by the writ and endorsement thereon directed to be levied, or so much thereof as has not been otherwise levied or raised, and such Sheriff or other officer may sue in his own name for the recovery of the sums secured thereby, when the time of payment thereof has arrived. C. S. U. C. c. 22, s. 261.

Payment thereon to the Sheriff to be valid.

**29.** The payment to such Sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty or other security, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery and levy in execution (as the case may be), from his liability on any such cheque, bill of exchange, promissory note, bond, specialty or other security. C. S. U. C. c. 22, s. 262.

Sheriff to pay over moneys so paid to him.

**30.** The Sheriff or other officer shall pay over to the party who sued out the writ the money so recovered, or a sufficient sum to discharge the amount by the writ directed to be levied. C. S. U. C. c. 22, s. 263.

Surplus to be paid to the party against whom the execution issues.

**31.** If, after satisfaction of the amount together with Sheriff's poundage and expenses, any surplus remains in the hands of the Sheriff or other officer, the same shall be paid to the party against whom the writ issued. C. S. U. C. c. 22, s. 264.

Sheriff not bound to sue until secured.

**32.** No Sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty or other security, unless the party who sued out the execution enters into a bond with two sufficient sureties to indemnify such Sheriff or officer from all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof; and the expense of such bond may be deducted out of any money recovered in such action. C. S. U. C. c. 22, s. 265.

#### PRIORITY OF EXECUTIONS.

Cases of execution from Superior or County Courts and Division Courts at the same time against the same debtor provided for.

**33.** Where a writ against the goods of a party has issued from any of the Superior or County Courts, and a warrant of execution against the goods of the same party has issued from a Division Court, the right to the goods seized shall be determined by the priority of the time of the delivery to be executed of the writ to the Sheriff, or of the warrant to the Bailiff of the Division Court; and the Sheriff, on demand, shall, by writing

signed by him or his Deputy or a clerk in his office, inform the Bailiff of the precise time of such delivery of the writ, and the Bailiff, on demand, shall show his warrant to any Sheriff's officer; and such writing purporting to be so signed, and the endorsement on the warrant showing the precise time of the delivery of the same to such Bailiff, shall respectively be sufficient justification to any Bailiff or Sheriff acting thereon. C. S. U. C. c. 22, s. 266.

#### RETURN OF UNSOLD GOODS.

**34.** It shall be the duty of the Sheriff, in every case where goods seized by him under execution remain unsold in his hands for want of buyers, to state and specify, in his return of "goods on hand," the time and place when and where such goods were offered for sale by him, and the names of at least three persons who were present at the time of such attempted sale, if so many were present, but if so many were not present, then the names of those who were present, if any, and that there were no others, and if no person was present then to state that fact. 27-8 V. c. 28, s. 27.

Return where goods remain in Sheriff's hands unsold.

#### WHAT MAY BE SOLD UNDER EXECUTION AGAINST LANDS.

##### 1. *Equity of Redemption.*

**35.** The Sheriff or other officer to whom any writ of *fiery facias* against the lands and tenements of any mortgagor of real estate is directed, may seize or take in execution, sell and convey (in like manner as any other real estate might be seized or taken in execution, sold and conveyed), all the legal and equitable interest of such mortgagor in the mortgaged lands and tenements. C. S. U. C. c. 22, s. 257.

The interest of a mortgagor may be sold in execution.

**2.** The equity of redemption in any freehold mortgage of real estate shall be saleable under an execution against the lands and tenements of the owner of such equity of redemption in his lifetime, or in the hands of his executors or administrators after his death, subject to such mortgage, in the same manner as any lands and tenements can now be sold under an execution at law. 27 V. c. 13, s. 1, *last part*.

In his lifetime or in the hands of his executors, &c.

**36.** The effect of such seizure or taking in execution, sale and conveyance, of any such mortgaged lands and tenements, shall be to vest in the purchaser, his heirs and assigns, all the legal and equitable interest of the mortgagor therein at the time the writ was placed in the hands of the Sheriff or other officer to whom the same is directed, as well as at the time of such sale, and to vest in such purchaser, his heirs and assigns, the same rights as such mortgagor would have had if such sale had not taken place; and the purchaser, his heirs or assigns, may pay, remove or satisfy any mortgage, charge or lien which at the time of such sale existed upon the lands or tenements so

Effect of such sale.

sold, in like manner as the mortgagor might have done, and thereupon the purchaser, his heirs and assigns, shall acquire the same estate, right and title as the mortgagor would have acquired in case the payment, removal or satisfaction had been effected by the mortgagor; and on payment of the mortgage money to the mortgagee by the purchaser, his heirs or assigns, the mortgagee, his heirs or assigns, shall, if required, give to such purchaser, his heirs or assigns, at his or their charge, a certificate of payment or satisfaction of such mortgage, which certificate may be in the following form, that is to say :

To the Registrar of the County of

I, A. B., of \_\_\_\_\_, do certify that C. D., of \_\_\_\_\_, who has become the purchaser of the interest of E. F., of \_\_\_\_\_, has satisfied all money due upon a certain mortgage made by the said E. F., to me, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_ and registered at \_\_\_\_\_ of the clock in the forenoon (*as the case may be*) of the \_\_\_\_\_ day of \_\_\_\_\_, in the same year (*or as the case may be*), and that such mortgage is therefore discharged. As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

(Signed)

A. B.

E. H., of \_\_\_\_\_, }  
G. H., of \_\_\_\_\_, } Witnesses.

And such certificate shall be of the like effect, and shall be acted upon by Registrars and others to the same extent as if the same had been given to the mortgagor. C. S. U. C. c. 22, s. 258.

Mortgagees  
may become  
purchasers at  
Sheriffs' sales.

**37.** Any mortgagee of lands and tenements so sold, or the heirs or assigns of such mortgagee (being or not being plaintiff or defendant in the judgment whereon the writ of *fiery facias* under which such sale takes place has issued), may be the purchaser at such sale, and shall acquire the same estate, interest and rights thereby as any other purchaser; but in the event of the mortgagee becoming such purchaser, he shall give to the mortgagor a release of the mortgage debt; and if any other person becomes such purchaser, and if the mortgagee enforces payment of the mortgage debt against the mortgagor, then such purchaser shall repay the amount of such debt and interest to the mortgagor, and in default of payment thereof within one month after demand, the mortgagor may recover from such purchaser the amount of such debt and interest, in an action for money had and received, and until such debt and interest have been repaid to the mortgagor he shall have a charge therefor upon the mortgaged lands. C. S. U. C. c. 22, s. 259.

How secs.  
35 to 37 are to  
be construed.

**38.** Wherever the word "mortgagor" occurs in the three next preceding sections, it shall be read and construed as if the words "his heirs, executors, administrators or assigns, or person having the equity of redemption," were inserted immediately after such word "mortgagor." 27 V. c. 13, s. 1.

2. *Contingent interests.*

**39.** Any estate, right, title or interest in lands which, under the fifth section of *The Act respecting the Transfer of Real Property*, may be conveyed or assigned by any party, or over which such party has any disposing power which he may, without the assent of any other person, exercise for his own benefit, shall be liable to seizure and sale under execution against such party, in like manner and on like conditions as lands are by law liable to seizure and sale under execution, and the Sheriff selling the same may convey and assign the same to the purchaser in the same manner and with the same effect as the party might himself have done. 24 V. c. 41, s. 8; 40 V. c. 8 s. 37.

Any estate which may be conveyed, &c., under Rev. Stat. c. 98, s. 5, to be liable to execution.

## SALES AGAINST EXECUTORS.

**40.** The title and interest of a testator or intestate in real estate in Ontario, may be seized and sold under a judgment and execution recovered by a creditor of the testator or intestate, against his executor or administrator, in the same manner and under the same process that the same could be sold under a judgment and execution against the deceased, if living. 27 V. c. 15, s. 1. See also *Rev. Stat. c. 107, s. 13.*

Interest in real estate in Ont. declared seizable on a judgment against an executor.

## NOTICE OF SALE OF LANDS.

**41.** Before the sale of real estate upon execution against lands and tenements, the Sheriff shall publish an advertisement of sale in the *Ontario Gazette*, at least six times, specifying:

Notice of sale of lands in execution.

- (a) The particular property to be sold;
- (b) The names of the plaintiff and defendant;
- (c) The time and place of the intended sale;

and he shall, for three months next preceding the sale, also publish such advertisement in a public newspaper of the County in which the lands lie, or shall for three months put up and continue a notice of such sale in the office of the Clerk of the Peace, or on the door of the Court House or place in which the Court of General Sessions of the Peace for such County is usually holden; but nothing herein contained shall be taken to prevent an adjournment of the sale to a future day. C. S. U. C. c. 22, s. 267.

**42.** The advertisement in the *Ontario Gazette* of any lands for sale under a writ of execution, during the currency of the writ giving some reasonably definite description of the land in such advertisement, shall be deemed a sufficient commencement of the execution to enable the same to be completed by a sale and conveyance of the lands after the writ has become returnable. C. S. U. C. c. 22, s. 268.

Notice in *Gazette* shall constitute incipient execution.



If Sheriff leaves office, his successor to execute writs against lands.

**43.** If the Sheriff goes out of office during the currency of any writ of execution against lands, and before the sale, such writ shall be executed and the sale and conveyance of the lands be made by his successor in office, and not by the old Sheriff. C. S. U. C. c. 22, s. 269. *See also Rev. Stat. c. 16, s. 48.*

#### POUNDAGE.

Sheriff's poundage.

**44.** Upon any execution against the person, lands or goods, the Sheriff may, in addition to the sum recovered by the judgment, levy the poundage fees, expenses of the execution, and interest upon the amount so recovered from the time of entering the judgment. C. S. U. C. c. 22, s. 270.

In what cases Sheriff entitled to poundage.

**45.** In case a part only is made by the Sheriff on, or by force of any execution against goods and chattels, the Sheriff shall be entitled, besides his fees and expenses of execution, to poundage only upon the amount so made by him, whatever be the sum endorsed upon the writ, and in case the personal estate, except chattels real, of the defendant is seized or advertised on or under an execution, but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money is actually made by the Sheriff on or by force of such execution, the Sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized not exceeding the amount endorsed on the writ, or such less sum as a Judge of the Court out of which the writ issued may deem reasonable under the circumstances of the case. 31 V. c. 24, s. 4 (1).

When Sheriff entitled to mileage and fees only.

**46.** In cases of writs of execution upon the same judgment to several Counties, wherein the personal estate of the judgment debtor or debtors has been seized or advertised but not sold, by reason of satisfaction having been obtained under or by virtue of a writ in some other County, and no money has been actually made on such execution, the Sheriff shall not be entitled to poundage, but to mileage and fees only for the services actually rendered and performed by him, and the Court out of which the writ issued, or any Judge thereof, may allow him a reasonable charge for such services, in case no special fee therefor is assigned in any table of costs. 31 V. c. 24, s. 4 (1).

If party dissatisfied, he may apply to the Court, who may reduce the amount.

**47.** In case any person liable on any execution is dissatisfied as to the amount of poundage fees and expenses of execution that any Sheriff claims under the tariff of fees and allowances now in force, or under this Act, he may, before or after payment thereof, apply to the Court out of which such writ issued, or to any Judge thereof, and if, upon a statement of the whole facts, the said Court or Judge, after notice to the

Sheriff, is of opinion that such amount is unreasonable, notwithstanding that it is according to the tariff, or this Act, the same shall be reduced or ordered to be refunded upon such terms as to costs or otherwise, as the Court or Judge may think fit to impose. 31 V. c. 24, s. 4 (2).

## COSTS.

**48.** Upon the settlement of an execution, either in whole or in part, by payment, levy or otherwise, the Sheriff or officer claiming any fees, poundage, incidental expenses or remuneration, which have not been taxed, shall, upon being required by either plaintiff or defendant, or the attorney of either party, and on payment or tender of the expenses of such taxation, and the further sum of twenty-five cents for the copy of his bill in detail (which he shall be bound to render) have his fees, poundage, incidental expenses or remuneration, as the case may be, taxed by the Clerk or the Deputy Clerk of the Crown of the County wherein such Sheriff keeps his office. 27-8 V. c. 28, s. 39. Taxing Sheriff's costs.

**49.** No Sheriff shall collect any fees, costs, poundage or incidental expenses, after having been required to have the same taxed, without taxation; and upon tender of the amount taxed, no fees, costs, poundage or incidental expenses in respect of proceedings subsequently taken shall be allowed to any Sheriff. 27-8 V. c. 28, s. 40. Costs not to be collected till taxed.

**50.** It shall be the duty of every Taxing Officer above referred to, to tax the bills of costs presented to him for taxation, as herein required, upon payment or tender of his fees, and to give, when requested, a certificate of such taxation and the amount thereof. 27-8 V. c. 28, s. 41. How to be taxed, and taxation certified.

**51.** It shall be the duty of every Taxing Officer aforesaid, upon proof of notice of the time and place of such taxation having been served upon the Sheriff, Deputy-Sheriff, or other officer charged with the execution of the writ, to examine the bills presented to him for taxation, as herein required, whether such taxation is opposed or not, and to be satisfied that the items charged in such bill are correct and legal, and to strike out all charges for services which, in his opinion, were not necessary to be performed. 27-8 V. c. 28, s. 42. Duty of taxing officer.

**52.** Either party dissatisfied with the taxation may appeal to the Court, or to a Judge of the Court in which the proceedings are taken, for a revision of such taxation, as in ordinary cases. 27-8 V. c. 28, s. 42. Revision of taxation.

## WRITS OF CAPIAS AD SATISFACIENDUM.

**53.** Every writ of *capias ad satisfaciendum* shall be tested and bear date the day on which it issues, and shall continue in Teste and date of writs of *ca. sa.*

Rev. Stat.  
c. 67, s. 7.

force two months from the day of the date thereof, inclusive, and no longer; and no such writ shall be renewed, but on the expiration thereof a new Judge's order may be obtained in the manner directed by the seventh section of *The Act respecting Arrest and Imprisonment for Debt*. C. S. U. C. c. 22, s. 272.

#### WRITS OF EXECUTION TO FIX BAIL.

Writs to fix  
bail.

**54.** Writs of execution to fix bail may be tested and returnable in Vacation. C. S. U. C. c. 22, s. 273.

#### DISCHARGE OF EXECUTION DEBTORS FROM CUSTODY.

On what au-  
thority Sheriffs  
may discharge  
debtors from  
custody.

**55.** A written order under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* has been issued, shall justify the Sheriff, gaoler or person in whose custody the party is under such writ, in discharging such party, unless the party for whom such attorney professes to act has given written notice to the contrary to such Sheriff, gaoler or person in whose custody the opposite party is; but such discharge shall not be a satisfaction of the debt unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client. C. S. U. C. c. 22, s. 274.

#### TO COMPEL SPECIFIC DELIVERY OF CHATTELS.

Execution in  
detinue.

**56.** In all cases where specific goods, chattels, deeds, securities, or valuable papers, or other articles of the like kind, are demanded in detinue, and the plaintiff has judgment to recover the same or their value, the Court or any Judge thereof shall, at the request of the plaintiff, where a recovery or delivery of the property in specie is desired, direct a writ of execution to issue on the judgment, commanding the defendant specifically to deliver up forthwith the property demanded, and, in case of refusal, that the defendant be arrested and detained in prison until he complies with the terms of the writ, and also that the goods and chattels of the defendant to double the value of the property in question be taken and kept until the further order of the Court to ensure or enforce obedience to the writ; or, at the option of the plaintiff, the Court or Judge may order the Sheriff to make of the defendant's goods the value of such chattel; but the plaintiff shall, either by the same or by a separate writ or writs of execution (to be issued in the ordinary manner) be entitled to have made of the defendant's goods or lands, the damages, costs and interest in such action. C. S. U. C. c. 22, s. 300; 36 V. c. 8, s. 45.

Option to the  
plaintiff.

Damages,  
costs, &c.

#### RULES TO RETURN WRITS, AND DUTY OF SHERIFFS AND CORONERS THEREON.

Deputy Clerks  
of the Crown  
and County

**57.** Every Deputy Clerk of the Crown and Pleas, and in County Courts the Clerk, may sign and issue rules on any

Sheriff to return writs and process issued out of the office of such Deputy Clerk or County Court Clerk and directed to such Sheriff: and each Sheriff shall, in case of his being served with any such rule, return such writs to the office from which the same issued. C. S. U. C. c. 22, s. 275.

Court Clerks may issue rules to return writs, &c.

**58.** In case a writ delivered to a Sheriff for service or execution has remained in his hands fifteen days, and in case he has not been delayed from returning the same by an order in writing from the party from whom he received the writ, his attorney or agent, and in case he is afterwards ruled to return such writ, he shall not be entitled to any fees thereon unless, within four days after being so ruled, he returns or encloses the writ by post to such party, his attorney or agent. C. S. U. C. c. 22, s. 276.

Sheriff not entitled to fees on writs unless returned in four days after being ruled, if delivered 15 days before such ruling.

**59.** In case the party who delivered any writ or process to any Sheriff to be executed, by himself or by his attorney, or by the agent of such attorney, requires, by a demand in writing, the Sheriff to return such writ either to the party or to his attorney or attorney's agent, or to the Court from which the process issued, and whether such requisition is made before or after the return day of such writ or process, or before or after the service or other execution thereof, the Sheriff shall within eight days, inclusive of the day of the service of the requisition, return such writ or process, according to the terms of the requisition, to the party or to the attorney, or to the agent of the attorney, or to the Court; and in case the Sheriff wilfully refuses or neglects to do so, he shall be liable to be ruled to return such writ or process, and to be further proceeded against as in other cases of contumacy to orders or rules of Court. 27-8 V. c. 28, s. 34.

Sheriff refusing to make return when demanded by party who delivered it to him.

Rule against Sheriff.

**60.** In all cases where the party to the writ or process who did not deliver the same to the Sheriff to be executed is entitled, according to the practice of the Court, to call for a return of the writ or process, he may proceed in like manner to procure such return, as is above provided in the case of parties who have delivered the writ or process to the Sheriff for execution. 27-8 V. c. 28, s. 35.

Other party entitled to return may proceed in like manner.

**61.** In every case in which a Sheriff neglects or refuses to return any writ or process when so called upon, he shall be bound to pay the costs of any rule or order taken out to compel such return, and all other costs consequent thereon, and also the costs of the previous requisition to make the return. 27-8 V. c. 28, s. 36.

When Sheriff liable to costs for not returning writs.

**62.** In case at any time after the proper day for the performance of any other duty or matter relating to the office of Sheriff, application is made for a rule, and a rule is granted on him by any Court, for the performance of the duty or matter, he shall,

When Sheriff to pay costs of proceedings to compel performance of other duties.



unless the Court or a Judge otherwise orders, pay to the party making the application or obtaining the rule, all taxable costs therein. C. S. U. C. c. 22, s. 278.

Frivolous proceedings against a Sheriff.

**63.** In case it appears to the Court or a Judge that the application for a rule is frivolous or vexatious, the Court or Judge may, on discharging the application, specially order that no costs shall be paid by such Sheriff; or may specially order that costs shall be paid to the Sheriff by the party making the application. C. S. U. C. c. 22, s. 279; 27-8 V. c. 28, s. 38.

Personal service on Sheriff unnecessary.

**64.** In no case in which a personal service on the Sheriff of any rule or other proceeding has heretofore been required, shall such personal service be necessary, if it appears by affidavit that inquiry was made for the Sheriff, and that he could not conveniently be found to make such personal service upon, but full and sufficient service shall be deemed to have been made upon such Sheriff by serving the Deputy Sheriff of such Sheriff, if such Deputy Sheriff can be conveniently found to make such service upon; and if such Deputy Sheriff cannot conveniently be found, then such service may be made upon the Sheriff's Clerk, or upon any Bailiff of the Sheriff who may for the time being be present in, or have charge of, the Sheriff's office. 27-8 V. c. 28, s. 37.

Certain sections to apply to Coroners and Elisors.

**65.** The forty-eighth, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-seventh, fifty-eighth, fifty-ninth, sixtieth, sixty-first, sixty-second and sixty-third sections of this Act shall extend and apply to Coroners and Elisors employed in the service or executing of the process of any of the Superior Courts, or of the County Courts. 27-8 V. c. 28, s. 45.

Attachments for non-return of writs may be issued unless further time for return granted.

**66.** In case a writ is issued out of any Court of Record directed to a Sheriff or Coroner, and is delivered to him for execution, and in case such Sheriff or Coroner is ordered to return the same by any rule or order of the Court out of which the writ issued, and does not make such return within the time specified in the order, any Judge having jurisdiction in the matter may grant to the plaintiff or defendant in the writ (*as the case may be*) a summons upon the Sheriff or Coroner to show cause why a writ of attachment should not issue against him; and the same or any other Judge having such jurisdiction may, at the return of the summons, discharge the same, or order a writ of attachment to issue against the Sheriff or Coroner, or limit a further period after which such writ of attachment shall issue unless a return be made in the meantime, or otherwise order as to such Judge seems proper under the circumstances. C. S. U. C. c. 22, s. 280.

If writ not returned within extended time given by Judge,

**67.** In case such writ is not returned at the expiration of any further time limited by the order of the Judge, as mentioned in the last preceding section, and in case the service of

such order and the failure of the Sheriff or Coroner to return the writ is proved, the Court in Term time, or any Judge having jurisdiction as aforesaid in Vacation, may order a writ of attachment to issue forthwith against the Sheriff or Coroner. C. S. U. C. c. 22, s. 281.

**68.** Upon the return of "*cepi corpus*" to any such attachment in Vacation, any Judge having jurisdiction as aforesaid may direct the issue of a writ of *habeas corpus*, and thereupon may exercise the same powers and discretion in committing the Sheriff or Coroner to close custody, or in admitting him to bail, and in all other respects, as are possessed by the said Courts respectively in Term time. C. S. U. C. c. 22, s. 282.

**69.** All writs of attachment and *habeas corpus* issued against any Sheriff or Coroner may be returnable on a day certain in Vacation to be fixed by order of the Judge or Court ordering the same; and such return day shall not be more than thirty days from the issuing of the writ; and when the writ is returnable in Vacation, it shall, when issued out of the Superior Courts, be made returnable before the presiding Judge in Chambers, and when issued out of any County Court, before the Judge thereof. C. S. U. C. c. 22, s. 283.

**70.** Any Sheriff or Coroner who does not return any writ issued out of any of the said Courts within three months after a writ of attachment for not returning the same has been executed against him, shall forfeit his office; and if he continues after the expiration of such period to exercise the duties of his office without having been duly re-appointed to the same, he shall forfeit and pay the sum of four hundred dollars to any person who sues therefor in any of Her Majesty's Courts of Record having competent jurisdiction; but no such suit shall be brought after the expiration of twelve months from the time such forfeiture was incurred. C. S. U. C. c. 22, s. 284.

**71.** The five next preceding sections of this Act shall not be construed to interfere with or take away any remedy which existed before the passing thereof. C. S. U. C. c. 22, s. 286.

#### ENFORCEMENT OF DECREES, &C., IN CHANCERY, AND RULES AND ORDERS OF COURTS OF COMMON LAW.

**72.** For the purpose of enforcing payment of any money or of any costs, charges, or expenses payable by any decree or order of the Court of Chancery, or any rule or order of the Courts of Queen's Bench or Common Pleas, or any rule or order of a County Court, the person to receive payment shall be entitled to writs of *fiery facias* and *venditioni exponas* respectively, against the property of the person to pay, and shall also be entitled to attach and enforce payment of the debts of or

accruing to the person to pay, in the same manner respectively, and subject to the same rules as nearly as may be, as in the case of a judgment at law in a civil action.

Same rules,  
&c., to apply  
as in other  
cases.

2. Such writs shall have the like effect as nearly as may be, and the Courts and Judges shall have the same powers and duties in respect to the same and in respect to the proceedings under the same, and the parties and Sheriff respectively shall have the same rights and remedies in respect thereof, and the writs shall be executed in the same manner and subject to the same conditions, as nearly as may be, as in the case of like writs in other cases; but subject to such General Rules and Orders varying or otherwise affecting the practice in regard to the said matters, as the Courts respectively may from time to time make under their authority in that behalf. C. S. U. C. c. 24, s. 19.

Person having  
carriage of the  
decree &c., to  
be deemed the  
person to re-  
ceive payment

3. In case a decree or order in Chancery directs the payment of money into Court, or to the credit of any cause, or otherwise than to any person, the person having the carriage of the decree or order, so far as relates to such payment, shall be deemed the person to receive payment within the meaning of the two preceding sub-sections. C. S. U. C. c. 24, s. 20.

#### WRITS OF SEQUESTRATION.

Writs of  
Sequestration.

**73.** The Court of Chancery may also issue writs of sequestration as hitherto, or in such cases as by General or other Orders the Court may think expedient; and nothing in this Act or in *The Act respecting Arrest and Imprisonment for Debt*, shall be construed to take away the jurisdiction of the Court under or by means of such writs. C. S. U. C. c. 24, s. 21; 24 V. c. 41, s. 4.

Rev. Stat.  
c. 67.

[*For Execution against Municipal Corporations, see Rev. Stat. c. 174, ss. 408 & 409.*]

## CHAPTER 67.

## An Act respecting Arrest and Imprisonment for Debt.

---

Arrest when may be had at law, ss. 1-6	Gaol limits, s. 15.
Writs of <i>Ca. Re.</i> , s. 5.	Security from debtors allowed to go
Writs of <i>Ca. Sa.</i> , s. 7.	at large, ss. 16-28.
Writs of Arrest, ss. 8, 9.	In case of separation of United
Arrest for non-payment of money,	Counties, ss. 29-30
ss. 10-12.	Discharge from custody, s. 31.
Person having carriage of decree to	Persons in criminal custody, s. 32.
be deemed plaintiff, s. 13.	Liability of Sheriff for an escape,
Custody of persons arrested, s. 14.	s, 33.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

## ARREST AT LAW.

1. No writ of *capias* to arrest and hold to bail shall be issued for a cause of action less than one hundred dollars, but such writ may be issued when the cause of action equals or exceeds that sum. C. S. U. C. c. 24, s. 1. Arrest restricted to \$100.

2. No person shall be subject to arrest under any such writ who, by reason of any privilege, usage or otherwise, is by law exempt therefrom. C. S. U. C. c. 24, s. 2. Privileged persons not to be arrested.

3. No person shall be liable to arrest for non-payment of costs, and no married woman shall be liable to arrest either on mesne or final process. C. S. U. C. c. 24, s. 3. No arrests for costs.  
No married woman to be arrested.

4. No person shall be arrested or imprisoned on any claim or on any judgment recovered against him as a debtor at the suit of any person for any penalty or sum of money in the nature of a penalty or forfeiture, whether such claim or suit be in the name of such person alone, or in the form of proceeding known as *qui tam*, &c. notwithstanding anything to the contrary in any statute providing for the recovery of such penalties or sums by action at law, except in cases and under circumstances where, on claims or judgments for ordinary debts, parties can be arrested or imprisoned. C. S. U. C. c. 24, s. 4. No person to be arrested on judgment against him as a debtor for any penalty; unless under the same circumstances as in other cases.

5. In case any party or plaintiff being a creditor of, or having a cause of action against any person liable to arrest, In certain cases defendant may be held



to bail on affidavit of certain facts and order of a Judge: *ca. res.* may issue on such order within a limited time.

by the affidavit of himself or of some other individual shows to the satisfaction of a Judge of either of the Superior Courts of Common Law, or to the Judge or acting Judge of any County Court, that such party or plaintiff has a cause of action against such person to the amount of one hundred dollars or upwards or that he has sustained damage to that amount, and also by affidavit shows such facts and circumstances as satisfy the said Judge, that there is good and probable cause for believing that such person, unless he be forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally or the said party or plaintiff in particular; such Judge may, by a special order, direct that the person against whom the application is made, as being about to quit Ontario with intent as aforesaid, shall be held to bail for such sum as the Judge thinks fit, and thereupon such party or plaintiff, within the time expressed in such order, but not afterwards, may sue out a writ of *capias* and one or more concurrent writs of *capias* in either of the said Superior Courts, or in the County Court, as the case may be, against the person so directed to be held to bail, and the Judge or the acting Judge of any County Court, may grant such orders to hold to bail where process is intended to be sued out of, or an action has been commenced in either of the said Superior Courts, as well as in his own Court. C. S. U. C. c. 24, s. 5.

**Affidavit need not be at first entitled in any Court.**

**6.** It shall not be necessary that any such affidavit should, at the time of the making thereof, be entitled of or in any Court, but the style and title of the Court out of which the process issues may be added at the time of suing out the process, and such style and title when so added shall, for all purposes and in all civil proceedings, be taken and adjudged to have been part of the affidavit *ab initio*. C. S. U. C. c. 24, s. 6.

[C. S. U. C. c. 24, s. 6, also enacts as follows:—

Such style and title, when so added, shall be for all purposes and in all proceedings, whether civil or criminal, taken and adjudged to have been part of the affidavit *ab initio*.]

#### WRITS OF CAPIAS AD SATISFACIENDUM.

**When writs of *ca. sa.* may issue without further affidavit.**

**7.** In cases in which the defendant has been held to special bail upon a writ of *capias* issued on a Judge's order made under this Act, it shall not be necessary before suing out a writ of *capias ad satisfaciendum* to obtain a Judge's order for the issuing thereof, or to make or file any further or other affidavit than that upon which the order authorizing the defendant's arrest was obtained in the first instance; but where the defendant has not been so held to special bail, if the plaintiff in the action, by the affidavit of himself or some other party, shows to the satisfaction of a Judge of either of the said Superior Courts of Common Law, or, where the case is in a County Court, shows to the Judge or acting Judge of such Court, that he has recov-

**When a further affidavit necessary and the contents thereof.**

ered judgment against the defendant for the sum of one hundred dollars or upwards, exclusive of costs, and also by affidavit shows such facts and circumstances as satisfy the Judge that there is good and probable cause for believing either that the defendant, unless he is forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally or the plaintiff in particular, or that the defendant has parted with his property or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution, such Judge may, by special order, direct that a *capias ad satisfaciendum* be issued, and such writ may thereupon be issued upon such judgment according to the practice of the said Courts. C. S. U. C. c. 24, s. 12.

## WRITS OF ARREST.

8. The writ of *ne exeat Provincia* shall be called a writ of arrest, and no order shall be granted for a writ of arrest unless the party applying for the writ has a cause of suit to at least such an amount, and shows by affidavit such facts and circumstances as this Act requires in the case of a special order for holding a party to bail under the fifth section of this Act. C. S. U. C. c. 24, s. 8.

In what cases only a writ of arrest shall be granted.

9. The bail or security required to be taken under a writ of arrest shall not be that the person arrested will not go or attempt to go out of Ontario, but shall merely be to the effect that the person arrested will perform and abide by the orders and decrees made or to be made in the suit, or will personally appear for the purposes of the suit at such times and places as the Court may from time to time order, and will, in case he becomes liable by law to be committed to close custody, render himself (if so ordered) into the custody of any Sheriff the Court may from time to time direct. C. S. U. C. c. 24, s. 11.

Conditions of bail-bond under writ of arrest.

## ARREST FOR NON-PAYMENT OF MONEY.

10. Process of contempt for non-payment of any sum of money, or for non-payment of any costs, charges or expenses, payable by any decree or order of the Court of Chancery or of a Judge thereof, or by any rule or order of the Court of Queen's Bench or Common Pleas or of a Judge thereof, or by any decree, order or rule of a County Court or a Judge thereof, is abolished: and no person shall be detained, arrested or held to bail for non-payment of money unless a special order for the purpose is made on an affidavit or affidavits establishing the same facts and circumstances as are necessary for an order for a writ of *capias ad satisfaciendum*, under this Act; and in such case the arrest when allowed shall be made by means of a writ of attachment corresponding as nearly as may be to a writ of *capias ad satisfaciendum*. C. S. U. C. c. 24, s. 13.

Process of contempt for non-payment of money, costs, &c., abolished

Same affidavit required for an arrest in such cases as for a *ca. sa.*

But not when writ of arrest has issued.

**11.** But in case a party is arrested under a writ of arrest, it shall not be necessary before suing out a writ under the preceding section of this Act to obtain a Judge's order therefor, or to file any further affidavit than the affidavits on which the order for the writ of arrest was obtained. C. S. U. C. c. 24, s. 14.

Decrees, etc., for payment of money to be deemed judgments.

**12.** Every decree, rule or order of the Superior Courts of Law and Equity, and of the County Courts, directing payment of money or of costs, charges or expenses, shall, so far as it relates to such money, costs, charges, or expenses, be deemed a judgment, and the person to receive payment a creditor, and the person to make payment a debtor, within the meaning of this Act; and the said persons shall respectively have the same remedies, and the Courts and Judges and the officers of justice shall in such cases have the same powers and duties, as in corresponding cases under this Act. C. S. U. C. c. 24, s. 15.

#### PERSON HAVING CARRIAGE OF DECREE.

Person having carriage of the decree, etc., to be deemed the plaintiff.

**13.** In case a decree or order in Chancery directs the payment of money into Court, or to the credit of any cause, or otherwise than to any person, the person having the carriage of the decree or order, so far as relates to such payment, shall be deemed the person to receive payment or the plaintiff (as the case may be) within the meaning of this Act. C. S. U. C. c. 24, s. 20.

#### CUSTODY OF PERSONS ARRESTED.

Person arrested out of his County may be transferred to it, paying the cost.

**14.** In case a person is arrested and committed to gaol in any other County than that in which he resided or carried on business at the time, such person shall be entitled to be transferred to the gaol of his own County, on prepaying the expense of his removal; and the Sheriff in whose County he was arrested may, if he is satisfied of the facts, transfer him accordingly; but if the Sheriff declines to act without an order of the Court or a Judge, such an order shall be made on the application of the prisoner, and notice to the opposite party. C. S. U. C. c. 24, s. 16.

#### GAOL LIMITS.

Gaol limits.

**15.** The limits of each County for judicial purposes shall be the limits of the gaol of such County. C. S. U. C. c. 24, s. 24.

#### SECURITY FROM DEBTORS IN EXECUTION.

Sheriff may take from debtors in execution security.

**16.** The Sheriff of any County may take from any debtor confined in the gaol thereof, in execution or upon mesne process, a bond with not less than two or more than four sufficient sureties, to be jointly and severally bound in a penalty of double the amount for which such debtor is so confined, conditioned, that such debtor will observe and obey all notices, orders or rules of Court touching or concerning such debtor, or his appear-

ing to be examined *viva voce*, or his returning and being remanded into close custody, and that upon reasonable notice to them or any of them, requiring them so to do, they will produce such debtor to the Sheriff, and also that the said debtor will, within thirty days, cause the said bond, or the bond that may be substituted for the same, according to the provisions hereinafter contained, to be allowed by the Judge of the County Court of the County wherein the debtor is confined, and such allowance to be endorsed thereon by the said Judge; and for this purpose the Sheriff shall, upon reasonable notice given by the debtor, cause such first mentioned bond to be produced before the Judge. C. S. U. C. c. 24, s. 25.

17. The Sheriff may also require each surety, where there are only two, to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Ontario (stating where), and is worth the sum for which the debtor is in custody (naming it) and two hundred dollars more, over and above what will pay all his debts; or where there are more than two sureties, then he may require each surety to make oath as afore-said, that he is a freeholder or householder as aforesaid, and is worth one-half the sum for which the debtor is in custody (naming it), and two hundred dollars more, over and above what will pay all his debts. C. S. U. C. c. 24, s. 26.

18. Upon receipt of such bond, accompanied by an affidavit of a subscribing witness of the due execution thereof, and by the sureties' affidavits of solvency, if required by the Sheriff, the Sheriff may permit and allow the debtor to go out of close custody in gaol; and so long as such debtor in all respects observes, fulfils and keeps on his part the conditions of said bond, the Sheriff shall not be liable to the party of whom suit the debtor is confined in any action for the escape of such debtor from gaol. C. S. U. C. c. 24, s. 28.

19. The application for the allowance aforesaid shall be by motion of the debtor, and four clear days' notice thereof shall be given in writing to the plaintiff or his attorney, who at the time of such motion may object to the sufficiency of the sureties; and if the Judge refuses his allowance of the bond, then the debtor may cause another bond, made to the Sheriff in the same terms and under the same conditions, to be executed without any further application to the Sheriff, and may move in like manner and upon the like notice for the allowance thereof; and such bond, if allowed and endorsed as aforesaid, shall be substituted for and take the place of and have the like effect in all respects, and the like remedies shall be had thereon, as the bond so first given to the Sheriff as aforesaid would have had upon the allowance thereof, and such first given bond shall thereupon become void. C. S. U. C. c. 24, s. 27.

Surety to make affidavit, &c.

On receipt of such bond, Sheriff may allow the debtor to go at large without being liable for an escape.

Allowance of bond to be made on motion, &c.



When bond  
allowed,  
Sheriff's  
responsibility.

**20.** Upon such allowance being so endorsed, the Sheriff shall be discharged from all responsibility respecting such debtor, unless the debtor is again committed to the close custody of such Sheriff in due form of law. C. S. U. C. c. 24, s. 25.

Conditions of  
bail-bond  
under writ of  
ca. sa., or  
of attachment  
under sec. 10.

**21.** Persons who give bail under a writ of *capias ad satisfaciendum* or under a writ of attachment under the tenth section of this Act, shall not be bound to remain within the gaol limits, but may depart therefrom at their discretion, and when a person desires to give bail under such a writ the condition of the bond to the Sheriff shall not contain any provision that the debtor shall remain and abide within the limits of the gaol, or shall not depart therefrom unless discharged from custody by due course of law; but the condition shall provide as aforesaid, that the person arrested shall observe and obey all notices, orders and rules of the Court touching or concerning the debtor or person ordered to pay, or his appearing to be examined *viva voce* or otherwise, or his returning and being remanded into close custody; and the party or his bail shall not be entitled to claim longer time for so observing or obeying than he would have been entitled to if the party had been on the limits according to the practice before the fourth day of May, one thousand eight hundred and fifty-nine, but the Court may, notwithstanding, grant further time if the Court is of opinion that the same may be done without substantial injury to the interests of the party to receive the money. C. S. U. C. c. 24, s. 29.

If the sureties  
become insol-  
vent, etc.,  
Sheriff may  
re-take the  
debtor.

**22.** In case the Sheriff has good reason to apprehend that the sureties, or any of them, have, after entering into such bond, become insufficient to pay the amount by them severally sworn to, he may again arrest the debtor, and detain him in close custody. C. S. U. C. c. 24, s. 31.

The sureties  
may plead  
such arrest.

**23.** The sureties of the debtor may plead such arrest and detention in bar of any action brought against them upon the bond entered into by them, and such plea, if sustained in proof, shall wholly discharge them from such action; and the debtor may again be allowed to go at large, on giving to the Sheriff a new bond with sureties as aforesaid. C. S. U. C. c. 24, s. 32.

Bonds may be  
assigned.

**24.** Upon breach of the condition of any such bond, the party at whose suit the debtor is confined may require the Sheriff to assign the same to him, and such assignment shall be made in writing, under the seal of the Sheriff and attested by at least one witness, and the assignee of the Sheriff or the executors or administrators of such assignee may maintain an action in his or their own names upon such bond, which action the Sheriff shall have no power to release; but upon executing such assignment at such request, the Sheriff shall be thenceforth discharged from all liability on account of the debtor or his safe custody. C. S. U. C. c. 24, s. 33.

**25.** The sureties of any such debtor may surrender him into the custody of the Sheriff at the gaol, and the Sheriff, his Deputy or gaoler shall there receive such debtor into custody, and the sureties may plead such surrender or an offer to surrender and the refusal of the Sheriff, his Deputy or gaoler to receive the debtor into custody at the gaol, in bar of any action brought on the bond for a breach of the condition happening after such surrender or tender and refusal, and such plea, if sustained in proof, shall discharge them from the action; but such debtor may again be allowed to go at large, on giving to the Sheriff a new bond, with sureties as aforesaid. C. S. U. C. c. 24, s. 34.

The sureties may surrender the debtor, and to what Sheriff, etc.

**26.** The party at whose suit any debtor has been confined, may, at any time while the debtor is at large upon bail, apply to the Court or Judge from which the process issued, or a Judge having authority to dispose of matters arising in such Court for an order for the examination of the debtor, in the manner provided in *The Act respecting the Relief of Indigent Debtors*, and in case the debtor neglects or omits, to submit himself to be examined pursuant to the order made in that behalf, or refuses to make full answers in respect to the matters touching which he is examined, to the satisfaction of the Court or Judge, the Court or a Judge may make a rule or order that such debtor shall be committed to close custody, and the Sheriff, on due notice of such rule or order, shall forthwith take such debtor and commit him to close custody until he obtains a rule of Court or Judge's order for again allowing him to go out of close custody, on giving the necessary bond as aforesaid, or until he is otherwise discharged by due course of law. C. S. U. C. c. 24, s. 35. See 40 V. c. 7, *Sched. A* (103 *et seq.*)

Debtor on bail liable to be examined.

Rev. Stat. c. 69.

Or be re-committed.

**27.** A new rule or order may be granted on the debtor showing that he has submitted himself to be examined and made full answer as aforesaid, and has thereafter given to the plaintiff or his attorney ten days' notice of his intention to apply. C. S. U. C. c. 24, s. 36.

On answering may be again allowed to go at large.

**28.** The party at whose suit any debtor has been confined in execution may, wherever such debtor has been admitted to bail, sue out a writ of *fiery facias* against his lands or goods, notwithstanding that such debtor has been charged in execution, and such writ shall not be stayed, but shall be proceeded with until executed, although such debtor be re-committed to close custody; but the goods and chattels exempt by law from seizure shall be protected from such writ of *fiery facias*. C. S. U. C. c. 24, s. 37; 23 V. c. 25, ss. 3 & 4.

Plaintiff may have execution against property of debtor on bail.

#### CASES OF SEPARATION OF UNITED COUNTIES.

**29.** Any person arrested or held to bail under civil process, before the separation of a Junior from a Senior County, and

Proceedings under bailable process in cases

of dissolution  
of a Union of  
Counties.

liable to be imprisoned, shall be so imprisoned in the Gaol of the County in which he was arrested; and all proceedings in any suit or action in which any person was so arrested or held to bail, and all proceedings after judgment founded on the arrest or holding to bail, shall be carried on as if the arrest or holding to bail had taken place in such County as a separate County; and in case the proceedings are to be had in the Junior County, all the records and papers relative to the case shall be transmitted to the proper officer of the Junior County. 36 V. c. 48, s. 49.

Privileges of  
persons admit-  
ted to bail  
in United  
Counties,  
saved on disso-  
lution thereof.

**30.** In case a debtor or other person is (in manner prescribed by law) admitted to bail in a Union of Counties, and such Union is afterwards dissolved, or one or more Counties are separated from such Union, and in case any such person after the dissolution of the Union is surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the Sheriff of the County in which he is arrested, and be imprisoned in the Gaol thereof. C. S. U. C. c. 24, s. 38; 36 V. c. 48, s. 50.

#### DISCHARGE FROM CUSTODY.

Person on bail  
may obtain  
discharge, &c.,  
as if in close  
custody.

**31.** A person arrested under a writ of *capias ad satisfaciendum*, or under a writ of attachment, though he is not confined to close custody but has given bail, may apply for and obtain his discharge in the same manner and subject to the same terms and conditions, as nearly as may be, as an execution debtor who is confined to close custody. C. S. U. C. c. 24, s. 39; C. S. U. C. c. 26, s. 13.

#### PRISONERS IN CRIMINAL CUSTODY.

Provisions of  
this Act not  
to extend to  
persons in cus-  
tody on crimi-  
nal charges.

**32.** None of the foregoing provisions relative to the discharge from custody or admission to bail shall extend or be applicable to debtors who are at the same time in custody upon any criminal charge. C. S. U. C. c. 24, s. 40.

#### LIABILITY OF SHERIFF FOR AN ESCAPE.

Sheriff, &c.,  
not to be  
liable in debt  
for escape.

**33.** If any debtor in execution escapes out of legal custody, the Sheriff, Bailiff, or other person having the custody of such debtor, shall be liable only to an action upon the case for damages sustained by the person or persons at whose suit such debtor was taken or imprisoned, and shall not be liable to any action for debt in consequence of such escape. 34 V. c. 12, s. 7. *See also Rev. Stat. c. 16, s. 30.*

## CHAPTER 68.

## An Act respecting Absconding Debtors.

Absconding debtor defined, s. 1.  
 Procedure to obtain Writ of Attachment, ss. 2, 3.  
 Writ of Attachment form, renewal service, &c., ss. 4-7.  
 Procedure after service of writ:  
   Order to proceed, s. 8.  
   Proof of plaintiff's claim, s. 9.  
   Bail and restoration of property, ss. 10-12.  
   What property may be attached, s. 13.  
   Perishable property, s. 14, 15  
   Division Court attachments superseded, s. 16.  
   Sheriff's costs, s. 17, 18.

Costs where attachment not warranted, s. 19.  
 Suits pending at issue of writs to continue, s. 20.  
 Fraudulent judgments in such suits, s. 21.  
 Attachment of debts due to the absconding debtor, ss. 22, 23.  
 Suits by Sheriff for such debts, ss. 24-27.  
 Rateable distribution where more than one writ sued out, s. 28.  
 Division Court judgment creditor to participate, ss. 29, 30.  
 Surplus to be restored to debtor, s. 31.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

## AN ABSCONDING DEBTOR DEFINED.

1. If any person resident in Ontario indebted to any other person, departs from Ontario with intent to defraud his creditors, and at the time of his so departing is possessed to his own use and benefit, of any real or personal property, credits or effects therein not exempt by law from seizure, he shall be deemed an absconding debtor, and his property, credits or effects aforesaid, may be seized and taken for the satisfying of his debts by a writ of attachment. C. S. U. C. c. 25, s. 1.

Who to be regarded as an absconding debtor.

## PROCEDURE TO OBTAIN WRIT OF ATTACHMENT.

*In the Superior Courts.*

2. Upon affidavit made by any plaintiff, his servant or agent, that any such person so departing is indebted to such plaintiff in a sum exceeding one hundred dollars, and stating the cause of action, and that the deponent has good reason to believe and does verily believe that such person has departed from Ontario

Proceedings upon affidavit that the defendant has absconded, etc.



Further  
affidavit.

Writ of  
attachment to  
issue.

and has gone to (stating some place to which the absconding debtor is believed to have fled, or that the deponent is unable to obtain any information as to what place he has fled to), with intent to defraud the plaintiff of his just dues, or to avoid being arrested or served with process, and was, at the time of his so departing, possessed of real or personal property, credits or effects, not exempt by law from seizure, to his own use and benefit in this Province, and upon the further affidavit of two other credible persons, that they are well acquainted with the debtor mentioned in the first named affidavit, and have good reason to believe and do believe that such debtor has departed from Ontario with intent to defraud the said plaintiff, or to avoid being arrested or served with process, either of the Superior Courts of Common Law or any Judge thereof, or the Judge of any County Court, may, by rule or order, direct a writ of attachment to issue from either of such Superior Courts, and may in such rule or order appoint the time for the defendants putting in special bail, which time shall be regulated by the distance from Ontario of the place to which the absconding debtor is supposed to have fled, having due regard to the means of and necessary time for postal or other communication. C. S. U. C. c. 25, s. 2; 40 V. c. 7, *Sched. A* (102).

### *In County Courts.*

In cases within  
County Court  
jurisdiction  
Judges to or-  
der writs to  
issue.

**3.** In case the sum claimed is within the jurisdiction of the County Courts, any such Court or the Judge or acting Judge thereof, may in like manner, by rule or order direct a writ of attachment to issue from such Court, and the proceedings thereon shall be the same as in this Act provided. C. S. U. C. c. 25, s. 4.

### WRIT OF ATTACHMENT AND SUMMONS.

Contents of.

**4.** The writ of attachment shall also contain a summons to the absconding debtor, and shall be in the form given in the Schedule to this Act. C. S. U. C. c. 25, s. 5.

To be dated on  
day of issue  
and to be in  
force six  
months.

Rev. Stat. c. 50.

**5.** Every such writ shall be dated on the day on which it is issued, and shall be in force for six months from its date, and may be renewed for the purpose of effecting service on the defendant, in like manner as a writ of summons may be renewed under "*The Common Law Procedure Act.*" C. S. U. C. c. 25, s. 6.

Writ of  
attachment to  
issue in dupli-  
cate.

**6.** Every writ of attachment shall issue in duplicate, and shall be so marked by the officer issuing the same (the costs of suing out the same being allowed only as if a single writ issued) and one writ shall be delivered to the Sheriff to whom the same is directed, and the other shall be used for the purpose of effecting service on the defendant. C. S. U. C. c. 25, s. 7.

7. The plaintiff may, at any time within six months from the date of the original writ of attachment, without further order from the Court or a Judge, issue from the office whence the original writ issued, one or more concurrent writ or writs of attachment, to bear teste on the same day as the original writ, and to be marked by the officer issuing the same with the word "*Concurrent*" in the margin, which concurrent writ or writs of attachment may be directed to any Sheriff other than the Sheriff to whom the original writ was issued, and need not be sued out in duplicate or be served on the defendant, but shall operate merely for the attachment of his real or personal property, credits, or effects in aid of the original writ. C. S. U. C. c. 25, s. 10.

Plaintiff may obtain concurrent writs to other Sheriffs.

For attaching property.

#### PROCEDURE AFTER SERVICE OF WRIT.

8. In case it is shewn by affidavit to the Court or a Judge having jurisdiction in the case, that a copy of the writ was personally served on the defendant, or that reasonable efforts were made to effect such service, and that such writ came to his knowledge, or that the defendant has absconded in such a manner that after diligent inquiry no information can be obtained as to the place he has fled to, such Court or Judge, if the defendant has not put in special bail may either require some further attempt to effect service or may appoint some act to be done which shall be deemed good service, and thereupon, (or on the first application, if the Court or Judge thinks fit) such Court or Judge may authorize the plaintiff to proceed in the action in such manner and subject to such conditions as the Court or Judge may direct or impose. C. S. U. C. c. 25, s. 8.

Further proceedings after service, &c.

9. Before the plaintiff obtains judgment he shall prove the amount of the debt or damages claimed by him in such action, either before a jury on an assessment, or by reference as provided in "*The Common Law Procedure Act*," according to the nature of the case, and no execution shall issue until the plaintiff, his attorney or agent, has made and filed an affidavit of the sum justly due to the plaintiff by the absconding debtor, after giving him credit for all payments and claims which might be set off or lawfully claimed by the debtor at the time of making such last mentioned affidavit, and the execution shall be endorsed to levy the sum so sworn to with the taxed costs of suit, or the amount of the judgment including the costs, whichever is the smaller sum of the two. C. S. U. C. c. 25, s. 9.

Plaintiff must prove his claim, &c.

Rev. Stat. c. 50.

#### BAIL.

10. The Court or a Judge at any time before or after final judgment, but before execution executed, upon an application supported by satisfactory affidavits, accounting for the defendant's delay and default and disclosing a good defence on the

Court may allow defendant to put in special bail.

merits, may, having regard to the time of the application and other circumstances, let in the defendant to put in special bail and to defend the action, or may reject the application. C. S. U. C. c. 25, s. 11.

Defendant's property to be restored on his putting in special bail.

**11.** The special bail (whether put in within the time limited by the writ or within such time as the Court or a Judge directs,) shall be put in and perfected in like manner as if the defendant had been arrested on a writ of *capias* for the amount sworn to on obtaining the attachment; and after being so put in and perfected, the defendant shall be let in to plead, and the action shall proceed as in ordinary cases begun by writ of *capias*. C. S. U. C. c. 25, s. 12.

Or proceeds if sold.

**12.** Upon the defendant so putting in and perfecting special bail, all his property, credits and effects attached in that suit, (excepting any which may have been disposed of as perishable, and then the net proceeds of the goods so disposed of,) shall be restored and paid to him unless there be some other lawful ground for the Sheriff to withhold or detain the same. C. S. U. C. c. 25, s. 13.

#### WHAT PROPERTY MAY BE ATTACHED.—INVENTORY, ETC.

Sheriff to attach all the property and credits of defendant.

**13.** All the property, credits and effects of an absconding debtor, including all rights and shares in any association or corporation, may be attached in the same manner as they might be seized in execution; and the Sheriff to whom any writ of attachment is directed shall forthwith take into his charge or keeping all such property and effects according to the exigency of the writ, and shall be allowed all necessary disbursements for keeping the same, and he shall immediately call to his assistance two substantial freeholders of his County, and with their aid he shall make a just and true inventory of all the personal property, credits and effects, evidence of title or debt, books of account, vouchers and papers that he has attached, and shall return such inventory signed by himself and the said freeholders, together with the writ of attachment. C. S. U. C. c. 25, s. 14.

Inventory to be made.

#### PERISHABLE PROPERTY.

How perishable goods shall be dealt with.

**14.** In case any horses, cattle, sheep, pigs, or any perishable goods or chattels, or such as from their nature (as timber or staves) cannot be safely kept or conveniently taken care of, are taken under any writ of attachment, the Sheriff who attached the same shall have them appraised and valued, on oath, by two competent persons; and in case the plaintiff desires it and deposits with the Sheriff a bond to the defendant executed by two freeholders (whose sufficiency shall be approved of by the Sheriff), in double the amount of the appraised value of such articles, conditioned for the payment of such appraised value to the defendant, his executors or administrators, together with all costs and damages incurred by the seizure and

sale thereof, in case judgment is not obtained by the plaintiff against the defendant, then the Sheriff shall proceed to sell all or any of such enumerated articles at public auction, to the highest bidder, giving not less than six days' notice of such sale, unless any of the articles are of such a nature as not to allow of that delay, in which case the Sheriff may sell such articles last mentioned forthwith; and the Sheriff shall hold the proceeds of such sale for the same purposes as he would hold any property seized under the attachment. C. S. U. C. c. 25, s. 15.

Sheriffs to hold proceeds.

**15.** If the plaintiff, after notice to himself or his attorney of the seizure of any articles enumerated in the last preceding section, neglects or refuses to deposit such a bond, or only offers a bond with sureties insufficient in the judgment of the Sheriff, then, after the lapse of four days next after such notice, the Sheriff shall be relieved from all liability to such plaintiff in respect to the articles so seized, and the said Sheriff shall forthwith restore the same to the person from whose possession he took such articles. C. S. U. C. c. 25, s. 16.

Such goods to be restored if plaintiff fails to give sufficient security.

#### WHEN DIVISION COURT ATTACHMENT SUPERSEDED.

**16.** If any Sheriff to whom a writ of attachment is delivered for execution, finds any property or effects, or the proceeds of any property or effects which have been sold as perishable, belonging to the absconding debtor named in such writ of attachment, in the hands, or in the custody and keeping of any Constable or of any Bailiff or Clerk of a Division Court by virtue of any warrant or warrants of attachment issued under "*The Division Courts Act*," such Sheriff shall demand and take from such Constable, Bailiff or Clerk, all such property or effects, or the proceeds of any part thereof as aforesaid, and such Constable, Bailiff or Clerk, on demand by such Sheriff and notice of the writ of attachment, shall forthwith deliver all such property, effects and proceeds as aforesaid to the Sheriff, upon penalty of forfeiting double the value of the amount thereof, to be recovered by such Sheriff, with costs of suit, and to be by him accounted for after deducting his own costs, as part of the property and effects of the absconding debtor; but the creditor or creditors who have duly sued out such warrant or warrants of attachment may proceed to judgment against the absconding debtor in the Division Court, and on obtaining judgment, and serving a memorandum of the amount thereof, and of the costs to be certified under the hand of the Clerk of the Division Court, every such creditor shall be entitled to satisfaction in like manner as, and in rateable proportion with, the other creditors of the absconding debtor who obtain judgment as hereinafter mentioned. C. S. U. C. c. 25, s. 17.

Proceeding if Sheriff finds property in the hands of a Bailiff or Clerk of a Division Court.

Rev. Stat. c. 47.

Creditor in Division Court may proceed to judgment.

#### SHERIFF'S COSTS.

**17** The cost of the Sheriff for seizing and taking charge of property, credits and effects under a writ of attachment, in-

Sheriff's costs, and how paid.



cluding the sums paid to any persons for assisting in taking an inventory, and for appraising (which shall be paid for at the rate of one dollar for each day actually required for and occupied in making such inventory or appraisement) shall be paid in the first instance by the plaintiff, and may, after having been taxed, be recovered by the Sheriff by action in any Court, having jurisdiction to the amount, and such costs shall be taxed to the party who pays the same as part of the disbursements in the suit against the absconding debtor, and be so recovered from him. C. S. U. C. c. 25, s. 18.

New writ not to make new inventory requisite.

**18.** The Sheriff having made an inventory and appraisement on the first writ of attachment against any absconding debtor, shall not be required to make a new inventory and appraisement on a subsequent writ of attachment coming into his hands, nor shall he be allowed any charge for an inventory or appraisement, except upon the first writ. C. S. U. C. c. 25, s. 19.

#### COSTS IN CASE OF ATTACHMENT NOT WARRANTED.

When defendant to recover costs of defence.

**19.** If, at any time before execution issues, it appears to the Court upon motion and upon hearing the parties by affidavit, that the defendant was not an absconding debtor within the true meaning of this Act, at the time of the suing out of the writ of attachment against him, such defendant shall recover his costs of defence, and the plaintiff shall, by rule of Court, be disabled from taking out any writ of execution for the amount of the verdict rendered or ascertained upon reference or otherwise recovered in such action, unless the same exceeds, and then for such sum only as the same exceeds, the amount of the taxed costs of the defendant, and in case the sum so recovered is less than the taxed costs of the defendant, then the defendant shall be entitled, after deducting the amount of the sum recovered from the amount of such taxed costs, to take out execution for the balance in like manner, as a defendant may now by law have execution for costs in ordinary cases. C. S. U. C. c. 25, s. 20.

#### PENDING SUITS TO CONTINUE.

Persons having previously commenced suits against the same defendant, may proceed to judgment, etc

**20.** Any person who has commenced a suit in any Court of Record in Ontario, the process wherein was served or executed before the suing out of a writ of attachment against the same defendant as an absconding debtor, may, notwithstanding the suing out of the writ of attachment, proceed to judgment and execution in his suit in the usual manner; and if he obtains execution before the plaintiff in any such writ of attachment, he shall have the full advantage of his priority of execution, in the same manner as if the property and effects of such absconding debtor still remained in his own hands and possession, but if the Court or a Judge so orders, subject to the prior satisfaction

of all costs of suing out and executing the attachment. C. S. U. C. c. 25, s. 21.

#### FRAUDULENT JUDGMENTS.

**21.** In case it appears to the Court in which any such prior action has been brought or to a Judge thereof that such judgment is fraudulent, or that such action has been brought in collusion with the absconding debtor, or for the fraudulent purpose of defeating the just claims of his other creditors, such Court or Judge may, on the application of the plaintiff on any writ of attachment, set aside such judgment and any execution issued thereon or stay proceedings therein. C. S. U. C. c. 25, s. 22.

If such suit be fraudulent, or collusive.

#### ATTACHMENT OF DEBTS DUE TO ABSCONDING DEBTOR.

**22.** In case notice in writing of the writ of attachment has been duly served upon any person owing any debt or demand to, or who has the custody or possession of any property or effects of, an absconding debtor, and in case such person after such notice pays any such debt or demand or delivers any such property or effects to such absconding debtor, or to any person for the individual use and benefit of such absconding debtor, he shall be deemed to have done so fraudulently, and if the plaintiff recovers judgment against the absconding debtor, and the property and effects seized by the Sheriff are insufficient to satisfy such judgment, such person shall be liable for the amount of such debt or demand, and for such property and effects or the value thereof. C. S. U. C. c. 25, s. 23.

Proceedings against persons paying debts to absconding debtor after notice of the seizure.

**23.** If after notice as aforesaid of a writ of attachment, any person indebted to the absconding debtor, or having custody of his property as aforesaid, is sued for such debt, demand or property by the absconding debtor, or by any person to whom the absconding debtor has assigned such debt or property since the date of the writ of attachment, he may, on affidavit, apply to the Court or a Judge, to stay proceedings in the action against himself, until it is known whether the property and effects so seized by the Sheriff, are sufficient to discharge the sum or sums recovered against the absconding debtor, and the Court or Judge may make such rule or order in the matter as the Court or Judge thinks fit, and if necessary may direct an issue to try any disputed question of fact. C. S. U. C. c. 25, s. 24.

Defendant's debtor sued by him after the seizure, may obtain stay of proceedings.

#### WHEN SHERIFF MAY SUE FOR OUTSTANDING DEBTS.

**24.** If the real and personal property, credits and effects of any absconding debtor attached by any writ of attachment as aforesaid, prove insufficient to satisfy the executions obtained in the suit thereon against such absconding debtor, the Sheriff

Debtor of defendant may be sued if defendant's property seized is

not sufficient  
to satisfy  
plaintiff.

having the execution thereof may, by rule or order of the Court or a Judge, to be granted on the application of the plaintiff in any such case, sue for and recover from any person indebted to such absconding debtor, the debt, claim, property or right of action attachable under this Act, and owing to or recoverable by such absconding debtor, with costs of suit, in which suit the defendant shall be allowed to set up any defence which would have availed him against the absconding debtor at the date of the writ of attachment, and a recovery in such suit by the Sheriff shall operate as a discharge as against such absconding debtor; and such Sheriff shall hold the moneys recovered by him as part of the assets of such absconding debtor, and shall apply them accordingly. C. S. U. C. c. 25, s. 25.

Averment to  
be inserted in  
Sheriff's de-  
claration.

**25.** The declaration in any such action by the Sheriff shall contain an introductory averment to the effect following :

A. B., Sheriff of ( &c.) who sues under the provisions of *The Act respecting Absconding Debtors*, in order to recover from C. D., debtor to E. F., an absconding debtor, the debt due (or other claim, according to the facts) by the said C. D., to the said E. F., complains, &c.

C. S. U. C. c. 25, s. 26.

Sheriff not  
bound to sue  
until creditor  
gives bond to  
indemnify  
him.

**26.** The Sheriff shall not be bound to sue any party as aforesaid until the attaching creditor gives his bond with two sufficient sureties, payable to such Sheriff by his name of office in double the amount or value of the debt or property sued for, conditioned to indemnify him from all costs, losses and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof. C. S. U. C. c. 25, s. 27.

Sheriff's suc-  
cessor may  
continue the  
action.

**27.** In the event of the death, resignation or removal from office of any Sheriff after such action brought, the action shall not abate, but may be continued in the name of his successor to whom the benefit of the bond so given shall enure as if he had been named therein, and a suggestion of the necessary facts as to the change of the Sheriff as plaintiff shall be entered of record. C. S. U. C. c. 25, s. 28.

#### WHEN DISTRIBUTION TO BE RATEABLE.

Proceedings if  
several persons  
take out writs  
against the  
same abscond-  
ing debtor.

**28.** When several persons sue out writs of attachment against an absconding debtor, the proceeds of the property and effects attached and in the Sheriff's hands, shall be rateably distributed among such of the plaintiffs in such writs as obtain judgments and sue out execution, in proportion to the sums actually due upon such judgments, and the Court or a Judge may delay the distribution, in order to give reasonable time for the obtaining of judgment against such absconding debtor. C. S. U. C. c. 25, s. 29.

## WHEN JUDGMENT CREDITOR IN DIVISION COURT TO PARTICIPATE.

**29.** Every creditor who produces a certified memorandum from the Clerk of any Division Court, of his judgment as aforesaid, shall be considered a plaintiff in a writ of attachment who has obtained judgment and sued out execution, and shall be entitled to share accordingly. C. S. U. C. c. 25, s. 30.

Creditors under Division Court judgments to share *pari passu*.

**30.** In case the property and effects of the absconding debtor are insufficient to satisfy the sums due to such plaintiffs, none shall be allowed to share, unless their writs of attachment were issued and placed in the hands of the Sheriff for execution within six months from the date of the first writ of attachment, or in case of a warrant of attachment, unless the same was placed in the hands of the Constable or Bailiff before or within six months after the date of the first writ of attachment. C. S. U. C. c. 25, s. 31.

Who to be entitled to share if the property proves insufficient to pay all.

## SURPLUS TO BE RESTORED.

**31.** If after the period of one month next following the return of any execution against the property and effects of any absconding debtor, or after a period of one month from a distribution under the order of the Court or a Judge, whichever last happens, and after satisfying the several plaintiffs entitled, there is no other writ of attachment or execution against the same property and effects in the hands of the Sheriff, then, all the property and effects of the absconding debtor, or unappropriated moneys the proceeds of any part of such property and effects, remaining in the hands of the Sheriff, together with all books of account, evidences of title or of debt, vouchers and papers whatsoever belonging thereto, shall be delivered to the absconding debtor or to the person or persons in whose custody the same were found, or to the authorized agent of the absconding debtor, and thereupon the responsibility of the Sheriff in respect thereto shall determine. C. S. U. C. c. 25, s. 32.

When all the seizing creditors are satisfied, the remaining property to be delivered up.

## SCHEDULE.

(Section 4.)

## FORM OF WRIT OF ATTACHMENT AND SUMMONS.

Ontario.	}	Victoria, &c.
County of		To the Sheriff of, &c.

[Seal.]

We command you, that you attach, seize and safely keep all the real and personal property, credits and effects, together with all evidences of



title or debts, books of account, vouchers and papers belonging thereto, of C. D., to secure and satisfy A. B. a certain debt (or demand) of \$ (the sum sworn to), with his costs of suit, and to satisfy the debt and demand of such other creditors of the said C. D. as shall duly place their Writs of Attachment in your hands or otherwise lawfully notify you of their claim, and duly prosecute the same. And We also command the said C. D., that within (the time named in the Judge's order or rule of Court) days after the service of this Writ on him, inclusive of the day of such service, he do cause special bail to be entered for him in Our Court (or County Court) of , in an action to recover \$ (the sum sworn to) at the suit of the said A. B. ; And We require the said C. D. to take notice that his real and personal property, credits and effects in Ontario have been attached at the suit of the said A. B., and that, in default of his putting in special bail as aforesaid, the said A. B. may, by leave of the Court or a Judge, proceed therein to judgment and execution, and may sell the property so attached : And We command you, the said Sheriff, that as soon as you have executed this Writ, you return the same with the inventory and appraisement of what you have attached thereunder.

Witness, &c.

*In the margin.*

Issued from the office of the Clerk of the Process (or Deputy Clerk of the Crown and Piers or Clerk of the County Court in the County of .)

(Signed)

A. C., Clerk of the Process (or Deputy Clerk, or Clerk of the County Court.)

*Memorandum to be subscribed on the Writ.*

N.B.—This Writ is to be served within six months from the date thereof, or if renewed, then from the date of such renewal, including the day of such date, and not afterwards.

*Endorsement to be made on the Writ before service thereof.*

This Writ may be served out of Ontario, and was issued by E. F., of , Attorney, &c. (as on a Writ of Summons, under "The Common Law Procedure Act").

C. S. U. C. c. 25, s. 5.

## CHAPTER 69.

## An Act respecting the Relief of Indigent Debtors.

---

Short title, s. 1.	Condition of discharge, s. 11.
Weekly allowance to debtors in close custody:	Re-committal in cases of fraud, breach of promise, seduction, &c., s. 12.
When allowed, ss. 2-6.	Re-committal where unduly discharged, s. 13.
Discharge of debtor if not paid, s. 3.	Provision for production of debtor out of custody for examination, s. 14.
Recovery of allowance from debtor, s. 7.	Common Law Procedure Act to apply, s. 15.
Discharge from custody on ground of indigence:	Act not to apply to persons in custody on criminal charges, s. 16.
Examination of debtor applying for discharge, s. 8.	
Application for discharge, s. 9.	
Further examinations, s. 10.	

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Indigent Debtors Act*." Short title.

2. If a debtor in close custody :

1. Upon *mesne* process ; or

2. In execution ; or

In what cases debtors in close custody to be entitled to weekly allowance.

3. Upon an attachment or other process, for non-payment of any sum of money awarded, or for the non-payment of any claim in the nature of a debt or demand due, being a sum certain or capable of being ascertained by computation and not in the nature of a penalty to enforce the doing of some act other than the payment of a sum of money, (in which several cases the debtor shall be deemed to be a prisoner in execution,) makes oath,

(a) That he is a prisoner in close custody, setting forth on which of the causes of detention above specified ; and Affidavit required.

(b) That he is unable to find bail ; and

(c) That he is not worth the sum of twenty dollars ; and

(d) That he does not believe the demand of the plaintiff to be just, and for that cause, and no other, resists payment of the same and refuses to confess judgment for the sum sworn to

The allowance when payable.

the Court from which the process issued, or any Judge having authority to dispose of matters arising in suits in such Court, shall make a rule or order on the plaintiff at whose suit the debtor is detained, to pay to such debtor on the third Monday after the service of such rule or order, and upon each Monday thereafter, so long as such debtor is detained in prison at the suit of such plaintiff for such cause, the sum of two dollars, and such payment shall be made to the debtor or to the gaoler in whose custody he is for the use of such debtor. C. S. U. C. c. 26, s. 1.

When debtor entitled to be discharged if allowance not paid.

3. In default of payment of such allowance, the debtor on his affidavit of the default and after service of a rule *nisi* or Judge's summons, to be obtained on such affidavit, shall, unless sufficient cause is shown to the contrary, be discharged from custody by rule or order ; but such discharge shall not, in case the debtor was confined on *mesne* process, prevent the plaintiff from proceeding to judgment and execution against the body, lands or goods according to the practice of the Court, and in case the debtor is a prisoner in execution, such discharge shall not be a release or satisfaction of the judgment or other debt or demand, nor shall such discharge, for the nonpayment whereof the debtor was in custody, deprive the plaintiff of any remedy against the lands or goods of such debtor. C. S. U. C. c. 26, s. 2.

Debtor not entitled to allowance or to his discharge in default of payment until he has answered satisfactorily upon examination touching his property.

4. When a debtor applies for the weekly allowance, or to be discharged from custody for the non-payment thereof, the plaintiff may apply to such Court or Judge for an order that the debtor shall be examined *viva voce* on oath before any person specially named by the Court or Judge, for the purpose of discovering any property or effects such debtor may be possessed of or entitled to, or which may be in the possession or under the control of some other person for his use or benefit, or which he may have fraudulently disposed of to injure his creditor, and until the debtor has made full answers respecting the same to the satisfaction of the Court or Judge, no rule or order for the payment of such weekly allowance shall be made, or if previously made, no order for his discharge for non-payment thereof shall be made. C. S. U. C. c. 26, s. 3 ; 40 V. c. 7, *Sched. A.* (103).

Examination of debtor.

5. If such debtor has obtained an order for payment of the weekly allowance, the plaintiff may at any time apply for such order for examination, and the Court or Judge, on the applica-

tion of the plaintiff, may stay further payment until the debtor has made full answers as aforesaid to the satisfaction of the Court or Judge. C. S. U. C. c. 26, s. 4; 40 V. c. 7, *Sched. A* (104).

6. In case such debtor is a prisoner in close custody in several suits or matters, he must make all the plaintiffs, in such suits or matters, parties to his application for the weekly allowance, and he shall only be entitled to one weekly sum of two dollars, although in custody in several suits and matters; and in any such case, if the weekly allowance be unpaid, the debtor shall have the same right as when in custody in one suit only, to be discharged from custody in all the suits or matters named in the order for payment, and the plaintiffs named in such order must all be made parties on any application for the debtor's discharge on account of non-payment, and all such plaintiffs must join in the examination of the defendant, as if they were plaintiffs in one suit, and such plaintiffs shall regulate among themselves the apportionment of the weekly allowance and the arrangement for payment thereof. C. S. U. C. c. 26, s. 5; 40 V. c. 7, *Sched. A* (105).

Defendant in custody on several writs, only entitled to one allowance, &c.

7. The plaintiff shall be entitled to recover from his debtor all sums paid to him for weekly allowance while a prisoner on *mesne* process, and upon proof of the amount of such payment before the proper Taxing Officer, such sums shall be allowed as disbursements in the suit and be taxed as part of the costs thereof. C. S. U. C. c. 26, s. 6.

Allowance may be recovered from debtor as costs.

8. In case any debtor, according to the intent and meaning of this Act, confined in close custody in execution, gives to the party at whose suit he is a prisoner or to his attorney, a notice in writing that he will, after the expiration of ten days from the day of the service of such notice, apply to be discharged from custody, the plaintiff, at whose suit he is confined, may apply to the Court from which the process issued or any Judge having authority to dispose of matters arising in suits in such Court, for an order that the debtor be examined *viva voce* on oath before some person specially named by the Court or Judge for the purpose of discovering any property or effects which such debtor is possessed of or entitled to, or which are in the possession or under the control of some other person for the use or benefit of such debtor, or which such debtor, having been in possession of, may have fraudulently disposed of to injure his creditor, and touching such debtor's estate and effects, and the circumstances under which he contracted the debt or incurred the liability which was the subject of the action in which judgment has been rendered against him, and as to the means and expectations such debtor then had, and as to the property and means he still has, and as to the disposal he may have made of any of his property. C. S. U. C. c. 26, s. 7; 40 V. c. 7, *Sched. A* (106).

A debtor in custody in execution, may apply to be discharged; and after what notice, &c.

Examination of such debtor as to his property, &c.



Application of such debtor for discharge on his having complied with certain requirements, and making a certain affidavit.

9. After the expiration of ten days from the day of the service of a notice by a debtor of his intention to apply for his discharge from custody under the next preceding section, and upon proof of such notice, and upon such debtor's making oath that he is not worth twenty dollars exclusive of his necessary wearing apparel, the bed and bedding of such debtor or his family, and one stove and cooking utensils of such debtor, and also the tools and implements of his trade, not exceeding the value of sixty dollars, and that he has submitted himself to be examined pursuant to the order of the Court or Judge (or if such order has not been served, that he has not been served with any such order) such debtor may apply to the Court from which the process on which he is confined issued, or to any Judge having authority to dispose of matters arising in suits in such Courts, for a rule or summons to show cause why he should not be discharged from custody, and upon the return of such rule or summons, and where such examination has taken place if the matter thereof is deemed satisfactory by such Court or Judge, such debtor shall be by rule or order discharged from custody, and such discharge shall have the same and no other effect as a discharge for non-payment of the weekly allowance. C. S. U. C. c. 26, s. 8; 40 V. c. 7, *Sched. A* (107).

Discharge and its effect.

Further examination of debtor may be ordered.

10. In case the plaintiff has already caused the debtor to be examined *viva voce*, and in case on the return of the rule or summons, further enquiry appears requisite for the ends of justice, the Court or Judge may allow the plaintiff a reasonable time to cause such debtor to be further examined *viva voce*, and may allow a reasonable time for the debtor to submit to such further examination, before the rule or summons is finally disposed of. C. S. U. C. c. 26, s. 9; 40 V. c. 7, *Sched. A* (108).

Discharge may be on condition of assignment by debtor.

11. The Court or Judge may make it a condition of the debtor's discharge that he shall first, by an assignment or conveyance, to be approved of by the Court or Judge, assign and convey to the party at whose suit he is in custody, any right or interest which he may have or be presumed to have in and to any property, real or personal, credits and effects, other than the wearing apparel, bed, bedding, stove, cooking utensils, tools and implements of trade before mentioned. C. S. U. C. c. 26, s. 10.

Re-committal of such debtor for not more than 12 months, in cases of fraud, seduction, libel, &c.

12. In case it appears to the Court or Judge that the debt for which such debtor is confined was contracted by any manner of fraud or breach of trust, or under false pretences, or that such debtor wilfully contracted such debt or incurred such liability without having had at the same time a reasonable assurance of being able to pay or discharge the same, or that he is confined by reason of any judgment in an action for breach of promise of marriage, seduction, criminal conversation, libel or slander, the Court or Judge may order the applicant to be recommitted to close custody for any period not exceeding

twelve months, and to be then discharged. C. S. U. C. c. 26, s. 11.

**13.** In case any discharge granted under this Act has been unduly or fraudulently obtained by any false allegation of circumstances which, if true might have entitled the debtor to be discharged by virtue of this Act, such debtor shall, upon the same being made to appear to the satisfaction of such Court or a Judge as aforesaid, be liable to be again taken in execution and remanded to his former custody by rule or order of such Court or Judge; but no Sheriff or gaoler shall be liable as for an escape of such debtor in respect of his enlargement during the time he has been at large by means of such his undue discharge as aforesaid. C. S. U. C. c. 26, s. 12.

Debtor unduly obtaining discharge may be re-taken in execution.

**14.** The Court or Judge making any order for examination of a debtor under this Act may issue an order to the Sheriff or gaoler having the custody of such debtor, to bring such debtor before him or before some person (to be named in such order), for the purpose of being so examined, and such Sheriff or gaoler shall take such debtor before such Judge or person named as aforesaid, for examination under the authority of this Act, in the same manner as if such Sheriff or gaoler were acting in obedience to a writ of *habeas corpus ad testificandum*. C. S. U. C. c. 26, s. 7; 40 V. c. 7, *Sched. A.* (106).

Debtor to be taken before the Judge upon his order.

**15.** "*The Common Law Procedure Act*" shall so far as applicable apply to this Act. C. S. U. C. c. 26, s. 15.

Rev. Stat. c. 50, to apply to this Act.

**16.** None of the foregoing provisions relative to the weekly allowance, or discharge from custody on account of indigence, shall extend or be applicable to debtors who are at the same time in custody upon any criminal charge. C. S. U. C. c. 26, s. 16.

Debtors in custody on criminal charges excepted.

## CHAPTER 70.

## An Act for more effectually securing the Liberty of the Subject.

---

<i>Habeas Corpus ad subjiciendum</i> , when awarded, s. 1.	<i>Certiorari</i> to bring papers and proceedings before the Court, s. 8.
Disobedience to writ, proceedings in case of, s. 2, 5.	Appeal to the Court of Appeal from a remandment to custody, s. 9.
Proceedings for inquiring into truth of a return, ss. 6, 7.	Act to extend to cases where writ issued under c. 2 of 31 Car. ii, s. 10.
	Rules and Orders, s. 11.

---

Preamble.

WHEREAS the Writ of *Habeas Corpus* has been found by experience to be an expeditious and effectual method of restoring any person to his liberty, who has been unjustly deprived thereof; And whereas extending the remedy of such writ, and enforcing obedience thereunto, and preventing delays in the execution thereof, will be advantageous to the public; And whereas the provisions made by an Act passed in England, in the thirty-first year of King Charles the Second entitled, "*An Act for the better securing the Liberty of the Subject, and for prevention of imprisonment, beyond the seas*," only extend to cases of commitment or detainer for criminal or supposed criminal matter: Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of Ontario, enacts as follows:

Imp. Act, 31  
Car. ii. c. 2.In what cases  
Hab. Corp. ad-  
Subjiciendum  
may be award-  
ed, and by  
whom in  
Vacation.

1. Where any person is confined or restrained of his liberty (except persons imprisoned for debt, or by process in any civil suit, or by the judgment, conviction or decree of any Court of Record, Court of Oyer and Terminer or General Gaol Delivery, or Court of General Sessions of the Peace,) any of the Judges of either of the Superior Courts of Law or Equity may, and they are hereby required upon complaint made to them by or on behalf of the person so confined or restrained, if it appears by affidavit (or affirmation in cases where by law an affirmation is allowed) that there is a probable and reasonable ground for such complaint, to award in Vacation time, a writ of *habeas corpus ad subjiciendum* under the seal of the Court wherein the application is made, directed to the person or persons in whose custody or power the party so confined or restrained is, returnable immediately before the Judge so awarding the same, or before any Judge in Chambers for the time being. 29-30 V. c 45, s. 1.

2. If the person or persons to whom any writ of *habeas corpus* is directed according to the provisions of this Act, upon service of such writ, either by the actual delivery thereof to him, or them, or by leaving the same at the place where the party is confined or restrained, with any servant or agent of the person or persons so confining or restraining, wilfully neglects or refuses to make a return or pay obedience thereto, he, or they shall be deemed guilty of a contempt of the Court under the seal whereof the writ issued, and the Judge before whom the writ is returnable, or any Judge in Chambers, upon proof made by affidavit of wilful disobedience of the said writ, may issue a warrant under his hand and seal for the apprehending and bringing before him or some other Judge of the said Courts, of the person or persons so wilfully disobeying the said writ, to the end that he or they may be bound to the Queen's Majesty with two sufficient sureties in such sum as in the warrant is expressed, with the condition to appear in the Court under the seal of which the writ issued, at a day in the same or any ensuing Term to be mentioned in the said warrant, to answer the matter of contempt with which he, or they are charged. 29-30 V. c. 45, s. 2.

Proceedings  
in case of dis-  
obedience to  
the writ.

Warrant for  
contempt.

3. In case of neglect or refusal to become bound as aforesaid, such Judge or Court may commit such person or persons so neglecting or refusing, to the Common Gaol of the County wherein such person or persons reside, or may be found, there to remain until he or they become bound as aforesaid, or are discharged by order of the Court in Term time, or by order of a Judge in Vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the same Court, and shall continue in force until the matter of such contempt has been heard and determined, unless sooner ordered by the Court to be discharged. 29-30 V. c. 45, s. 2.

Committal.

4. If such writ is awarded so late in the Vacation by any one of the said Judges, that in his opinion obedience thereto cannot be conveniently paid during such Vacation, the same shall, at his discretion, be made returnable in the Court wherein the application is made, at a day certain in the next Term; and the said Court shall proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said Court. 29-30 V. c. 45, s. 2.

If writ be  
issued late in  
Vacation.

5. If such writ is awarded in Term time so late that, in the judgment of the Court, obedience thereto cannot be conveniently paid during such Term, the same shall, at the discretion of the said Court, be made returnable at a day certain in the then next Vacation, before a Judge in Chambers, who shall proceed thereupon in such manner as by this Act is directed concerning writs issuing in and made returnable during the Vacation. 29-30 V. c. 45, s. 2.

If late in Term  
may be return-  
able in Vac-  
ation.



Proceedings for inquiring into the truth of the matters alleged in the return; before Judge before whom the writ is returnable.

Bail in certain cases.

Judge to transmit the writ and return to the Court, &c.

If the writ was awarded by the Court.

*Certiorari* to bring proceedings and papers before the Court for examination.

6. In all cases provided for by this Act, although the return to any writ of *habeas corpus* is good and sufficient in law, the Court or any Judge before whom such writ is returnable, may proceed to examine into the truth of the facts set forth in such return, by affidavit or by affirmation (in cases where an affirmation is allowed by law,) and do therein as to justice appertains; and if upon such return it appears doubtful on such examination, whether the material facts set forth in the said return, or any of them, are true or not, in such case the said Judge or the Court may let to bail the said person so confined or restrained, upon his entering into a recognizance, with one or more sureties, or in case of infancy, or other disability, upon security by recognizance in a reasonable sum, to appear in the Court wherein the application is made, upon a day certain in the Term following, and so from day to day as the Court may require, and to abide by such order as the Court may make in and concerning the premises; and any Judge before whom such writ is returned shall transmit into the same Court, the said writ and return, together with such recognizance, affidavits and affirmations; and thereupon the said Court may proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit (or affirmation in cases where by law affirmation is allowed,) and may order and determine touching the discharging, bailing, or remanding the party. 29-30 V. c. 45, s. 3.

7. The like proceedings may be had in the Court for controverting the truth of the return to any such writ of *habeas corpus* awarded as aforesaid, although such writ was awarded by the said Court itself, or is returnable therein. 29-30 V. c. 45, s. 4.

8. In all cases in which a writ of *habeas corpus* is issued under the authority of this Act or of the said Act of the thirty-first year of the reign of King Charles the Second or otherwise, the Judge or Court ordering the issuing of such writ or the Judge before whom such writ is returnable, either in Term time or Vacation, may direct the issuing of a writ of *certiorari* out of the Court from which such writ of *habeas corpus* issued, directed to the person or persons by whom or by whose authority any such person is confined or restrained of his liberty, or other person having the custody or control thereof, requiring him to certify and return to any Judge in Chambers or to the Court as by the said writ may be provided, all and singular the evidence, depositions, convictions, and all proceedings had or taken, touching or concerning such confinement or restraint of liberty, to the end that the same may be viewed and considered by such Judge or Court, and to the end that the sufficiency thereof to warrant such confinement or restraint, may be determined by such Judge or Court. 29-30 V. c. 45, s. 5.

9. In case any person confined or restrained of his liberty, as aforesaid, is brought before the Court in Term time upon a writ of *habeas corpus*, and is remanded to custody again upon the original order or warrant of commitment, or by virtue of any warrant, order or rule of such Court, such person may appeal from the decision or judgment of the said Court, to the Court of Appeal; and it shall be the duty of the Clerk of the Court whose decision or judgment is appealed from, upon notice to be given by or on behalf of the person so remanded to custody, to certify under the seal of the Court, the writ of *habeas corpus*, the return thereto, and all and singular the affidavits, depositions, evidence, conviction and other proceedings returned to or had before the said Court, unto the Court of Appeal; and the said Court of Appeal shall thereupon hear and determine the said appeal without any formal pleadings whatever; and if the said Court of Appeal adjudges or determines that such confinement or restraint is illegal, such Court shall certify the same, under the seal of the said Court, to the person or persons having the custody or charge of the person so confined or restrained, and shall order his immediate discharge, and he shall be discharged accordingly. 29-30 V. c. 45, s. 6.

Appeal from remandment to custody.

Certifying proceedings to Court of Appeal.

Court may order discharge.

10. The several provisions made in this Act, touching the making writs of *habeas corpus* issued in time of Vacation, returnable into the said Courts, or for making such writs awarded in Term time, returnable in Vacation, as the cases may respectively happen, and also for making wilful disobedience thereto a contempt of the Court, and for issuing warrants to apprehend and bring before the said Courts, Judge or any of them, any person or persons wilfully disobeying any such writ, and in all cases of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to gaol, as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon,—shall extend to all writs of *habeas corpus* awarded in pursuance of the said Act passed in England in the thirty-first year of the reign of King Charles the Second, or otherwise, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been hereinbefore specially named and provided for respectively. 29-30 V. c. 45, s. 7.

Certain provisions of this Act to extend to cases where the writ issues under the Imp. Act 31. Car. ii. c. 2.

11. The said Court of Appeal may, from time to time, and as often as occasion requires, make such rules of practice in reference to the proceedings on writs of *habeas corpus* as to the said Court may seem necessary or expedient. 29-30 V. c. 45, s. 8.

Rules and Orders.

## 5. ADMINISTRATION OF JUSTICE IN CRIMINAL MATTERS.

### 1. *Justices of the Peace.*

## CHAPTER 71.

### An Act respecting the Qualification and Appointment of Justices of the Peace.

Appointment of Justices, ss. 1, 3.	Proceedings to enforce penalty, ss. 13-19.
Qualification, ss. 4-7.	Limitation of actions, s. 20.
Oath of office, ss. 8-10.	Application of penalties, s. 21.
New oath not necessary on reappointment, s. 11.	Act not to extend to certain persons, s. 22.
Penalty for acting without being qualified or having taken oath, s. 12.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Appointment by the Lieutenant-Governor in Council.

**1.** It shall be lawful for the Lieutenant-Governor, whenever he thinks fit, to appoint, under the Great Seal of Ontario or the Privy Seal of the Lieutenant-Governor, as the case may require, one or more Justices of the Peace in and for every County, City, and Town in the Province and in and for any Provisional Judicial, Temporary Judicial or Territorial District or Provisional County, or for any portion of the territory of the Province not attached to any County, for ordinary municipal and judicial purposes. 31 V. c. 18, s. 1 ; 37 V. c. 7, ss. 65 & 71. *See also Rev. Stat. c. 90, s. 46.*

Revocation by new Commission.

**2.** Wherever a new General Commission of the Peace is issued, all and such like former General Commissions shall become absolutely revoked and cancelled ; but nothing in this Act contained shall prevent the reappointment of any Justice of the Peace named in such former Commission, if the Lieutenant-Governor thinks fit, and the issue of a supplementary Commission of the Peace for any County shall not operate as a

revocation of any General Commission. 31 V. c. 18, s. 2; 39 V. c. 7, s. 14.

3. Where a Town has been erected into a City, and the Council of the City duly organized, every Commission of the Peace theretofore issued for the Town shall cease. 36 V. c. 48, s. 313. Revocation of Commissions for a Town when it becomes a City.

4. Except where otherwise specially provided, all Justices of the Peace appointed in this Province shall be of the most sufficient persons dwelling in the Counties, Districts or places respectively for which they are appointed. C. S. C. c. 100, s. 1. Justices of the Peace to be of the most sufficient persons.

5. Except where otherwise specially provided by law, no Attorney or Solicitor in any Court whatever shall be a Justice of the Peace during the time he continues to practise as an Attorney or Solicitor. C. S. C. c. 100, s. 2. Unless specially provided, no attorney, etc., to be Justice of the Peace while practising.

6. No person having, using or exercising the office of Sheriff or Coroner in and for any County, District or place in Ontario shall be competent or qualified to be a Justice of the Peace or to act as such for any County, District or place wherein he is Sheriff or Coroner, during the time that he uses or exercises such office, under the penalties hereinafter mentioned; and every act done by such Sheriff or Coroner, by the authority of any Commission of the Peace, during the time aforesaid, shall be absolutely void and of none effect. C. S. C. c. 100, s. 17. Sheriffs and Coroners acting as such disqualified from acting as Justices of the Peace.

7. Except where otherwise provided by law, no person shall be a Justice of the Peace, or act as such, who has not in his actual possession, to and for his own proper use and benefit, an estate in free and common socage, in absolute property, or for life, or lease for one or more lives, or originally created for a term not less than twenty-one years, in lands, tenements, or hereditaments, lying and being in this Province, of or above the value of one thousand two hundred dollars over and above what will satisfy and discharge all encumbrances affecting the same, and over and above all rents and charges payable out of or affecting the same. C. S. U. C. c. 100, s. 3. Property qualification for Justice of the Peace.

8. Every Justice of the Peace before he takes upon himself Oath. to act as a Justice of the Peace, shall take and subscribe the oath following, before some Justice of the Peace, or before any person appointed by the Lieutenant-Governor to administer oaths and declarations, or before the Clerk of the Peace for the County or District for which he intends to act, that is to say:

"I, A. B., do swear, that I truly and *bona fide* have to and for my own proper use and benefit such an estate as qualifies me to act as a Justice of Peace for the County (or as the case may be) of \_\_\_\_\_, according to the true intent and meaning of *The Act respecting the Qualification and Appointment of Justices of the Peace* to wit (nature of such estate, whether land,



*and if land, designating), and that the same is lying and being (or is suing out of lands, tenements and hereditaments, situate) within the Township (or in the several Townships or as the case may be) of* ,  
—So help me God.”

C. S. C. c. 100, s. 3; 29 V. c. 12, s. 1.

The certificate of such oath to be deposited at the office of the Clerk of the Peace.

**9.** A certificate of such oath having been so taken and subscribed as aforesaid shall be forthwith deposited by the Justice of the Peace who has taken the same at the office of the Clerk of the Peace for the County or District, and shall, by the said Clerk, be filed among the records of the General Sessions of the Peace of the said County or District. C. S. C. c. 100, s. 4; 29 V. c. 12, s. 1.

Clerks of the Peace to deliver on demand an attested copy of such oath.

**10.** Every such Clerk of the Peace shall, upon demand, forthwith deliver a true and attested copy of the said oath in writing to any person paying the sum of twenty cents for the same; which copy being produced as evidence on the trial of any issue in any action or suit brought upon this Act, shall have the same force and effect as the record of the said oath would have if produced. C. S. C. c. 100, s. 5.

No new oath of qualification required from persons who have before qualified.

**11.** It shall not be necessary for any Justice named in any Commission who has under any former Commission qualified himself in the terms of the seventh and eighth sections of this Act, and deposited a certificate thereof in the office of the Clerk of the Peace, to take any oath of qualification before acting under such new Commission, unless such Justice, since he took such oath of qualification, has parted with the estate in right of which he so qualified. C. S. C. c. 100, ss. 20 & 21.

Penalty on Justices of the Peace acting without having taken the oath and not being qualified.

**12.** When not otherwise provided, any person who acts as Justice of the Peace in and for any County, District or place in this Province, without having taken and subscribed the aforesaid oath, or without being qualified according to the true intent and meaning of this Act, shall for every such offence forfeit the sum of one hundred dollars, one moiety to Her Majesty, and the other moiety to such person as will sue for the same, to be recovered, together with full costs of suit, by civil action or by information, in any Court having competent jurisdiction in the County, District or place wherein the offence has been committed, and in every such action or information, the proof of his qualification shall be upon the person against whom the suit is brought. C. S. C. c. 100, s. 6.

Manner of proceeding to enforce such penalty.

**13.** If the defendant in any such action, suit or information intends to insist upon any lands, tenements or real estate, not mentioned in the oath aforesaid, as constituting the whole or any part of his qualification to act as a Justice of the Peace, at the time of the offence alleged against him, he shall, at or before the time of his pleading, deliver to the plaintiff or informer, or to his attorney, notice in writing, specifying such lands,

Defendant may give notice of other lands.

tenements or real estate, and the Township or place, and the County or District in which the same are respectively situate, and if the plaintiff or informer in any such action suit or information thinks fit thereupon not to proceed any further, he may, with leave of the Court, discontinue such action, suit or information, on payment of such costs to the defendant as the defendant may be entitled to, according to the course and practice of the Court. C. S. C. c. 100, s. 7.

**14.** Upon the trial of any issue in any such action as aforesaid, no lands, tenements, or real estate which are not mentioned in the oath or notice as aforesaid, shall be insisted upon by the defendant as part of his qualification. C. S. C. c. 100, s. 8.

Lands not mentioned in the oath or notice inadmissible in proof of qualification.

**15.** Where the lands, tenements or real property mentioned in the said oath or notice, are, together with other lands, tenements or real property belonging to the person taking such oath, or delivering such notice, liable to any charges, rents or incumbrances, then the lands, tenements and real property mentioned in the said oath or notice shall be deemed liable and chargeable only so far as the other lands, tenements and real property so jointly charged are not sufficient to pay, satisfy or discharge the same. C. S. C. c. 100, s. 9.

When charges on land limited.

**16.** Where the qualification hereby required or any part thereof, consists of rent, it shall be sufficient to specify in such oath or notice, so much of the lands, tenements, or real property out of which such rent is issuing, as is of sufficient value to secure such rent. C. S. C. c. 100, s. 10.

If qualification consists of rent.

**17.** In case the plaintiff or informer in any such action suit or information discontinues the same, otherwise than as aforesaid, or judgment is given against him, the defendant shall recover treble costs. C. S. C. c. 100, s. 11.

Defendant if successful to recover treble costs.

**18.** In case an action, suit or information is brought, and due notice thereof is given to the defendant, no proceedings shall be had upon any subsequent action, suit or information against the same person, for any offence committed before the time of giving such notice; and the Court wherein a subsequent action, suit or information is brought, and pending, may upon the defendant's motion, stay the proceedings if such first action, suit or information is prosecuted without fraud and with effect, and no action, suit or information shall be deemed an action, suit or information within this Act, unless it is so prosecuted. C. S. C. c. 100, s. 12.

When proceedings in second actions to be stayed.

**19.** The Court in which any action, suit or information is brought for the recovery of any penalty imposed by this Act, shall require from the plaintiff or informer, his declaration upon oath that such action, suit or information is brought

Manner of proceeding in actions instituted for the recovery of penalties.

without fraud, and not for the purpose of protecting the defendant from any action, suit or information which might be brought by any other person, by reason of the same offence; and if such declaration is not made to the satisfaction of the Court, the action, suit or information shall be immediately dismissed with costs. C. S. C. c. 100, s. 13.

Limitation of actions.

**20.** Every action, suit or information given by this Act, shall be commenced within the space of six months next after the fact committed. C. S. C. c. 100, s. 15.

Fine and penalties to be paid to Provincial Treasurer.

**21.** The fines and penalties incurred and payable to Her Majesty, by virtue of this Act, shall be paid into the hands of the Provincial Treasurer, for the public uses of the Province. C. S. C. c. 100, s. 19.

Provisions in this Act not to extend to persons holding certain situations.

**22.** Nothing in this Act contained shall extend to the members of Her Majesty's Executive Council, or to the Judges of any of the Superior Courts of Law or Equity, or to any County Judge, or to Her Majesty's Attorney-General, or to any of Her Majesty's Counsel in the Law, or to any Mayor, Alderman, Reeve or Deputy-Reeve of any Municipality. C. S. C. c. 100 s. 16.

## CHAPTER 72.

### An Act respecting Police Magistrates.

Appointment, ss. 1, 2.  
Tenure of office, s. 3.

*Ex officio* to be a Justice of the Peace, ss. 4, 5.  
Jurisdiction, ss. 6-9.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

In what cases Police Magistrate to be appointed.

**1.** Every City and every Town having more than five thousand inhabitants, shall have a Police Magistrate, and the salary of such Police Magistrate shall not be less than on the following scale :

Salaries of Police Magistrates in cities.

(a) In Cities—Fourteen hundred dollars per annum (but any salary of a larger amount paid to any Police Magistrate, on the

twenty-ninth day of March, 1873, shall be continued whilst such Police Magistrate remains in office);

(b.) In Towns—Where the population is not more than six thousand—eight hundred dollars per annum; where the population is over six thousand and not more than eight thousand—one thousand dollars per annum; where the population is over eight thousand—twelve hundred dollars per annum.

and such salaries shall be paid half-yearly by the City or Town. 36 V. c. 48, s. 330.

2. Every other Town may, if the Lieutenant-Governor in Council sees fit to make such an appointment, have a Police Magistrate.

Police Magistrates in towns having less than 5,000 inhabitants.

2. No appointment of a salaried Police Magistrate shall in the first instance be made for a Town not having more than five thousand inhabitants, until two-thirds of the members of the Council do, in Council, pass a resolution affirming the expediency thereof; and the said Council may by such resolution fix the salary to be paid to such Police Magistrate: but no Police Magistrate appointed before the twenty-ninth day of March, 1873, in a Town with a less population than five thousand, shall be affected by this section. 37 V. c. 16, s. 9.

With salary.

3. The Lieutenant-Governor in Council may, however, at all times, notwithstanding anything in this Act contained, appoint a Police Magistrate without salary for any Town or Village.

Without salary.

3. Every Police Magistrate shall be appointed by the Lieutenant-Governor, and shall hold office during pleasure. 36 V. c. 48, s. 332.

Tenure of office.

4. Every Police Magistrate shall *ex officio* be a Justice of the Peace for the City or Town for which he holds office, and also for the whole County or Union of Counties in which, for either judicial or municipal purposes, such City or Town is situate. 36 V. c. 48, ss. 306 & 307.

To be a J. P. *ex officio*.

5. No Police Magistrate shall, after taking the oaths or making the declarations as such, be required to have any property qualification, or to take any further oath to enable him to act as a Justice of the Peace. 36 V. c. 48, s. 314.

Property qualification not requisite.

6. No other Justice of the Peace shall admit to bail, or discharge a prisoner, or adjudicate upon, or otherwise act in any case for any Town or City where there is a Police Magistrate, except that the Courts of General Sessions of the Peace, or in the case of the illness, absence, or at the request of the Police Magistrate. 32 V. c. 6, s. 11; 36 V. c. 48, s. 308.

When there is a Police Magistrate, other Justice of the Peace not to act.



Police Magistrate may sit alone with powers of two Justices.

7. Any Police Magistrate appointed for any City, Town or place, and sitting at a Police Court, or other place appointed in that behalf, shall have full power to do, alone, whatever is authorized, by any statute in force in this Province relating to matters within the legislative authority of the Legislature of the Province, to be done by two or more Justices of the Peace; and such Police Magistrate shall have such power while acting anywhere within the County for which he is *ex officio* a Justice of the Peace. 40 V. c. 8, s. 41.

Jurisdiction over certain offences.

8. The Police Magistrate shall have jurisdiction, in addition to his other powers, to try and determine all prosecutions for offences against the by-laws of the City or Town, and for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office. 36 V. c. 48, s. 309.

Jurisdiction of County Justices in certain towns.

9. Nothing herein contained shall interfere with the jurisdiction of Justices of the Peace for the County in which a Town having no Police Magistrate is situate, over offences committed in the Town. 36 V. c. 48, s. 312.

## CHAPTER 73.

### An Act to protect Justices of the Peace and other Officers from Vexatious Actions.

Malice, &c. when to be alleged in actions against Justices, ss. 1, 2.

Where conviction by one Justice and warrant thereon by another, action to be against convicting Justice, s. 3.

No action to lie, ss. 4-8.

Before conviction is quashed, 4.

Where warrant not followed by conviction, &c., s. 5.

Where Justice acts under order of a Judge, s. 6.

After conviction affirmed on appeal, s. 7.

Limitation of actions, s. 9.

Procedure in actions, ss. 10-19.

Officers to whom Act applies, s. 20.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Actions for things done within the ju-

1. Every action brought against any Justice of the Peace for any act done by him in the execution of his duty as such Jus-

tice, with respect to any matter within his jurisdiction as such Justice, or against any other officer or person fulfilling any public duty, for anything by him done in the performance of such public duty, whether any such duties arise out of the Common Law or are imposed by any Act either of the Imperial or Dominion Parliament, or of the Legislature of this Province, shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause; and if at the trial of any such action, upon the general issue pleaded, the plaintiff fails to prove such allegation, he shall be non-suited or a verdict shall be given for the defendant. C. S. U. C. c. 126, s. 1.

2. For any act done by a Justice of the Peace in a matter in which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under any conviction or order made or warrant issued by such Justice in any such matter, any person injured thereby may maintain an action against such Justice in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause. C. S. U. C. c. 126, s. 2.

3. Where a conviction or order has been made by a Justice or Justices of the Peace, and a warrant of distress or of commitment has been granted thereon by some other Justice of the Peace *bona fide* and without collusion, no action shall be brought against the Justice who granted such warrant by reason of any defect in the conviction or order, or for any want of jurisdiction in the Justice or Justices who made the same, but the action (if any is brought) shall be against the Justice or Justices who made the conviction or order. C. S. U. C. c. 126, s. 3.

4. No such action shall be brought for anything done under such conviction or order until the conviction or order has been quashed, either upon appeal or upon application to one of the Superior Courts of Common Law; nor shall any such action be brought for anything done under any warrant issued by such Justice to procure the appearance of the party, and which has been followed by a conviction or order in the same matter, until the conviction or order has been quashed as aforesaid. C. S. U. C. c. 126, s. 3.

5. If such last mentioned warrant has not been followed by a conviction or order, or in case it is a warrant upon an information for an alleged indictable offence, if a summons was issued previously to such warrant, and such summons was served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, Nor for an act done under a warrant to compel appearance, if a summons was previously served and not obeyed,

and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against the Justice for anything done under such warrant. C. S. U. C. c. 126, s. 4.

If a Justice refuses to do any act, either of the Superior Courts of Common Law or the County Judge may order him to do it, and no action shall then lie against him for doing it.

6. In all cases where a Justice or Justices of the Peace refuse to do any act relating to the duties of his or their office as such Justice or Justices, the party requiring such act to be done may, upon an affidavit of the facts, apply to either of the Superior Courts of Common Law, or to the Judge of the County Court of the County or United Counties in which such Justice or Justices reside, for a rule calling upon such Justice or Justices, and also the party to be affected by such act, to show cause why such act should not be done; and if, after due service of such rule, good cause is not shown against it, the said Court may make the same absolute, with or without or upon payment of costs, as may seem meet, and the Justice or Justices, upon being served with such rule absolute, shall obey the same, and shall do the act required; and no action or proceeding shall be commenced or prosecuted against such Justice or Justices for having obeyed the rule and done the act required as aforesaid. C. S. U. C. c. 126, s. 6.

After conviction, etc., confirmed on appeal, no action to lie for an act done under a warrant upon it.

7. In case a Justice of the Peace has granted a warrant of distress or a warrant of commitment upon any conviction or order which, either before or after the granting of the warrant, has been confirmed upon appeal, no action shall be brought against such Justice by reason of any defect in such conviction or order for anything done under the warrant. C. S. U. C. c. 126, s. 7.

If an action is brought contrary to this Act, Judge may set aside the proceedings.

8. In case any action is brought, where by this Act it is enacted that no such action shall be brought under the particular circumstances, a Judge of the Court in which the action is pending shall, upon application of the defendant, and upon an affidavit of facts, set aside the proceedings in such action, with or without costs, as to him seems meet. C. S. U. C. c. 126, s. 8.

Limitation of actions

9. No action shall be brought against any Justice of the Peace for anything done by him in the execution of his office, unless the same is commenced within six months next after the act complained of was committed. C. S. U. C. c. 126, s. 9.

Notice of action to be given, and how

10. No such action shall be commenced against any Justice of the Peace until one month at least after a notice in writing of the intended action has been delivered to him, or left for him at his usual place of abode, by the party intending to commence the action, or by his attorney or agent, in which notice the cause of action, and the Court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and also the name

and place of abode or of business of his attorney or agent, if the notice be served by such attorney or agent. C. S. U. C. c. 126, s. 10.

**11.** In every such action the venue shall be laid in the County where the act complained of was committed, and in actions in County or Division Courts the action shall be brought in the County or Division within which the act complained of was committed or in which the defendant resides, and the defendant may plead the general issue, and give any special matter of defence, excuse or justification in evidence under such plea, at the trial of the action. C. S. U. C. c. 126, s. 11.

Venue, how to be laid.

Defendant may plead the general issue, and give the special matter, &c., in evidence.

**12.** No action shall be brought in any County or Division Court against a Justice of the Peace for anything done by him in the execution of his office if the Justice objects thereto; and if within six days after being served with a notice of any such action, such Justice or his attorney or agent gives a written notice to the plaintiff in the intended action that he objects to being sued in such County or Division Court for such cause of action, no proceedings shall afterwards be had in such County or Division Court in any such action, but it shall not be necessary to give another notice of action in order to sue such Justice in any other Court. C. S. U. C. c. 126, s. 12.

Action not to be brought in County or Division Court, if the Justice objects.

**13.** In every such case after notice of action has been given as aforesaid, and before an action has been commenced, the Justice to whom such notice has been given may tender to the party complaining, or to his attorney or agent, such sum of money as he thinks fit as amends for the injury complained of in such notice; and after the action has been commenced, and at any time before issue joined therein, such defendant, if he has not made a tender, or in addition to the tender, may pay into Court such sum of money as he thinks fit, and such tender and payment of money into Court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue. C. S. U. C. c. 126, s. 13.

Tender and payment of money into Court by Justice.

**14.** If the jury (or the Judge, if the case be tried without a jury) at the trial be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into Court, they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuited, and the sum of money, if any, so paid into Court, or so much thereof as is sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of Court to him, and the residue, if any, shall be paid to the plaintiff. C. S. U. C. c. 126, s. 14.

If Judge or jury think plaintiff entitled to no greater damages, a verdict to be given for the defendant.

**15.** In case money is paid into Court in any such action, and the plaintiff elects to accept the same in satisfaction of his

If the plaintiff accepts the money.



damages in the action, he may obtain from any Judge of the Court in which the action has been brought, an order that the money shall be paid out of Court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause. C. S. U. C. c. 126, s. 15.

If plaintiff fails to prove certain things, he shall be non-suited or verdict given for the defendant.

**16.** If at the trial of any such action the plaintiff does not prove,

1. That the action was brought within the time hereinbefore limited in that behalf ; and

2. That such notice as aforesaid was given one month before the action was commenced ; and

3. The cause of action stated in such notice ; and

4. That the cause of action arose in the County or place laid as venue in the margin of the declaration ; and

5. (Where the plaintiff sues in a County or Division Court) that the cause of action arose within the County or United Counties for which such Court is holden ;

then and in any such case the plaintiff shall be nonsuited, or a verdict shall be given for the defendant. C. S. U. C. c. 126, s. 16.

Damages limited in certain cases.

**17.** In case the plaintiff in any such action is entitled to recover, and he proves the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he proves that he was imprisoned under such conviction or order, and seeks to recover damages for such imprisonment, and it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and with respect to such imprisonment that he has undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of three cents as damages for such imprisonment, or any costs of suit whatsoever. C. S. U. C. c. 126, s. 17.

If plaintiff recovers verdict, &c., to be entitled to costs,

**18.** If the plaintiff in any such action recovers a verdict, or the defendant allows judgment to pass against him by default, the plaintiff shall be entitled to costs in the same manner as if this Act had not been passed. C. S. U. C. c. 126, s. 18.

**19.** If in any such case it is stated in the declaration, or in the summons and particulars if the plaintiff sues in the Division Court, that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recovers a verdict for any damages, or if the defendant allows judgment to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between attorney and client; and in every action against a Justice of the Peace for anything done by him in the execution of his office, the defendant, if he obtains judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between attorney and client. C. S. U. C. c. 126, s. 19.

If malice and want of probable cause be alleged and plaintiff recovers, he shall be entitled to full costs.

When defendant is entitled to costs, &c.

**20.** So far as applicable, the whole of this Act shall apply for the protection of every officer and person mentioned in the first section hereof, for anything done in the execution of his office as therein expressed. C. S. U. C. c. 126, s. 20.

This Act to apply to every officer, &c., mentioned in s. 1.

## CHAPTER 74.

### An Act respecting Summary Convictions before Justices of the Peace.

#### Procedure before Justices.

Except in appeals, to be according to the practice under the Acts of Canada, from time to time in force, ss. 1-2.

Appeals from Justices to General Sessions, ss. 3-6.

In case of amendment of Acts of Canada, when amended Acts to apply, s. 7.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

#### PROCEDURE BEFORE JUSTICES.

**1.** Where a penalty or punishment is imposed under the authority of any statute of the Province of Ontario, or of any other statute or law now or hereafter in force in Ontario and relating to matters within the legislative authority of the

Procedure before Justices, &c., to be the same as under the Dominion

Acts respecting procedure in summary convictions.

Legislature of the said Province, and is recoverable before, or may be inflicted by, a Justice or Justices of the Peace, or a Police or Stipendiary Magistrate, the like proceedings, and no other, shall and may be had for recovering the penalty, compelling the attendance of the parties or witnesses, hearing the complaint, and for the conduct of the Court, the taking and estreating of recognizances, and the infliction of the punishment, and otherwise in respect thereof, and the convicting Justice, Justices or Police or Stipendiary Magistrate shall perform the like duties in respect thereto, and in respect of any conviction or order made by him or them by virtue of such statute, as, under the statutes of the Dominion of Canada then in force, might be had and should be performed, if such penalty or punishment had been imposed by a statute of Canada, unless in any Act hereafter passed imposing such penalty or punishment, it is otherwise declared.

2. Nothing in this section contained shall confer upon any person who considers himself aggrieved by a conviction or order made by any Justice, Justices or Police or Stipendiary Magistrate, the right of appealing to the General Sessions of the Peace, or shall affect procedure on appeals. 38 V. c. 4, s. 3; 40 V. c. 7, *Sched. A* (109).

Convictions and recognizances to be transmitted to Clerk of the Peace.

2. The Clerk of the Peace for the County shall be the proper officer to whom shall be transmitted convictions to be filed, and recognizances in respect of which proceedings require to be taken at the General Sessions of the Peace. 38 V. c. 4, s. 4.

#### APPEALS TO GENERAL SESSIONS.

Appeal from convictions, etc., of Justices, etc., to the General Sessions.

3. Any party who considers himself aggrieved by a conviction or order made by a Justice or Justices of the Peace, or by a Police or Stipendiary Magistrate, under the authority of any statute now or hereafter in force in Ontario, and relating to matters within the legislative authority of the Legislature of Ontario, may, unless it is otherwise provided by the particular Act under which the conviction or order is made, appeal therefrom to the General Sessions of the Peace. 38 V. c. 4, s. 5; 40 V. c. 24, s. 12, *See* 39 V. c. 7, s. 24.

Practice and proceedings on appeal to General Sessions;

4. In case an appeal lies to the Court of General Sessions of the Peace from a conviction or order made, as aforesaid, under the authority of a statute of the Legislature of Ontario or other statute or law now or hereafter in force in the Province of Ontario, and relating to matters within the legislative authority of the said Legislature, the practice and proceedings on the appeal and preliminary thereto, and otherwise in respect thereof, shall be the same as the practice and proceedings under the statutes of the Dominion of Canada then in force, on an appeal to the General Sessions of the Peace from a conviction before a Justice of the Peace, made under the authority of a statute of Canada;

except that either of the parties to the appeal may call witnesses and adduce evidence in addition to the witnesses called and evidence adduced at the original hearing. 38 V. c. 4, ss. 6 & 7; 39 V. c. 1, s. 1.

5. If upon the trial at the General Sessions of the Peace of an appeal from a decision of a Justice of the Peace upon any matter within the legislative authority of the Legislature of Ontario, it is proved upon the oath or affirmation of any credible witness that a person whose deposition has been taken upon the original hearing, is dead, or is so ill as not to be able to travel, or is absent from Ontario, or if it is proved in like manner that after diligent inquiry such person cannot be found to be served with a subpoena, and if it is also proved that such deposition was taken in presence of the person accused, and that he, his counsel or attorney, had a full opportunity of cross-examining the witness, and if the deposition purports to be signed by the Justice by or before whom the same purports to have been taken, it shall be received as evidence in the prosecution without further proof thereof, unless it is proved that the deposition was not in fact signed by the Justice purporting to have signed the same. 37 V. c. 7, s. 70.

At General Sessions of the Peace, on appeal from a decision of a J. P., the original depositions to be evidence in certain cases.

6. Any appellant may abandon his appeal by giving the opposite party notice of his intention in writing six days before the Sessions appealed to; and thereupon the Justice, Justices or Police Magistrate may tax the additional costs, if any, of the respondent, and add the same to the original costs, and proceed on the original conviction, or order, in the same manner as if there had been no appeal thereon. 38 V. c. 4, s. 9.

Abandonment of appeal; costs.

#### WHEN AMENDED ACTS OF CANADA TO APPLY.

7. If the Parliament of Canada amends any statute, the operation whereof is extended by virtue of this Act, no such amendment shall have any force in Ontario, by virtue of this Act, until after the termination of the Session of the Legislature of Ontario held next after the passing of the amending statute. 38 V. c. 4, s. 10.

When amendments of Dominion Acts shall take effect under this Act.



## CHAPTER 75.

## An Act respecting the Procedure on Appeals to the Judge of a County Court from Summary Convictions.

---

Interpretation, s. 1.	Proceeding on order of County Judge, ss. 8-12.
Procedure where appeal lies to County Judge,	Appeals to be on the merits notwithstanding defects of form, s. 13.
Giving of security and transmission of papers, &c., to Clerk of County Court, s. 3.	Dealings with money deposited on security, s. 14.
Liberation of prisoner on security being given, ss. 4, 5.	Convictions not to be quashed for defect of form, ss. 15, 16.
Summons to quash conviction, ss. 6, 7.	Powers of Judge, s. 17.
	Forms, s. 18.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Interpretation :

**1.** In the construction of this Act—

“Justice,”  
“Justice of the Peace,”

(1.) “Justice” or “Justice of the Peace,” shall include two or more Justices of the Peace or a Stipendiary or Police Magistrate ;

“Conviction.”

(2.) “Conviction” shall include an order made by a Justice of the Peace ; and

“Person convicted.”

(3.) “Person convicted” shall include any person against whom an order is made as aforesaid. 38 V. c. 11, s. 17.

Appeals to be to the Judge of the County wherein conviction made.

**2.** Wherever, by any statute now or hereafter in force relating to matters within the legislative authority of the Legislature of Ontario, an appeal is given to the Judge of the County Court without a jury, from a summary conviction had or made before a Justice of the Peace, and no special provision is made therefor, such appeal shall be to the Judge of the County Court of the County in which the conviction is made, sitting in Chambers, and the proceedings thereon shall be as hereinafter provided. 38 V. c. 11, s. 1.

Procedure.

**3.** In any of the following cases, namely :

First, appeal from conviction imposing

*Firstly.* If the appeal is against any conviction whereby only a money penalty is imposed, then, in case the person convicted

deposits with the convicting Justice the amount of the penalty and the costs and a further sum of ten dollars, or with two sufficient sureties enters into a recognizance (Form 1) before a Justice of the Peace, in a sum double the amount of the penalty and the costs, conditioned duly to prosecute the appeal, and to abide by and perform the order of the Judge thereupon, and to pay such costs as he may order.

money penalty, and security given by appellant.

*Secondly.* If the appeal is against a conviction whereby imprisonment is imposed, then, in case the person convicted, with two sufficient sureties, enters into a recognizance (Form 2), before a Justice of the Peace in a sum not less than one hundred nor more than two hundred dollars, as the convicting Justice directs, and in double the amount of any penalty and costs which the person convicted has been ordered to pay, conditioned as aforesaid, and also containing the further condition that the person convicted will surrender himself if the conviction is affirmed;

Second, appeal where imprisonment imposed, and security given by appellants.

*Thirdly.* If the person convicted is in custody for non-payment of a fine and costs, or in consequence of imprisonment being imposed as aforesaid, and fails to make the required deposit, or to enter into a recognizance, as hereinbefore provided, but deposits with the said Justice the sum of ten dollars;

Third, appeal when in custody and security given by appellants.

the said Justice shall, at the request of the person convicted, made within five days after the date of the conviction, forthwith transmit to the Clerk of the County Court, by registered letter post-paid, all the proceedings and evidence; which said proceedings and evidence, with a duplicate of any order made by the Judge as hereinafter provided, shall immediately, after the matter has been finally disposed of by the Judge, be transmitted by the Clerk of the County Court, in manner aforesaid, to the Clerk of the Peace, to be by him kept with the records of convictions. 38 V. c. 11, s. 2; 40 V. c. 7, *Sched. A.* (110).

In above cases the Justice to transmit proceedings, etc.

4. In any of the cases of the classes firstly and secondly above mentioned, the convicting Justice, upon the recognizance being given or the deposit made, as the case may require, shall stay all proceedings upon the conviction, and if the person convicted is in custody, the said Justice shall issue his warrant (Form 3) to liberate such person. 38 V. c. 11, s. 3.

In the first and second of above cases Justice to stay proceedings and liberate prisoner.

5. In any of the cases thirdly above mentioned the person appealing shall remain in custody while the appeal is pending, unless he is in custody for non-payment of a fine or costs, in which case the convicting Justice shall order his liberation upon his depositing (in addition to the said sum of ten dollars) the amount for the non-payment of which he is in custody. 38 V. c. 11, s. 3.

Mode of liberation in the third case.

Summons to show cause why conviction should not be quashed.

6. Within ten days after the date of the conviction, but not afterwards, unless it is made to appear to the Judge that the delay arose wholly from the default of the convicting Justice, the Judge of the County Court, if he is of opinion from the said evidence that the conviction may be erroneous, may grant a summons calling upon the County Crown Attorney and the prosecutor to show cause why the conviction should not be quashed.

2. Such summons shall not be granted in any case after the expiration of one month from the date of the conviction. 38 V. c. 11, s. 4.

Proceedings on return of summons

7. Upon the return of the summons the Judge upon hearing the parties may either affirm or quash the conviction, or, if he thinks fit, may hear the evidence of such other witness or witnesses as may be produced before him, or the further evidence of any witness already examined, and may then make an order affirming, or amending and affirming, or quashing the conviction as he may think just, and may order the payment of costs and may fix the amount thereof. 38 V. c. 11, s. 5.

Proceedings after order affirming or quashing conviction.

8. Upon the production of the Judge's order affirming, or amending and affirming the conviction, the Justice who has made the conviction shall, if the case is one in which a recognizance has not been given, issue his warrant for payment of such further sum for costs as the sum deposited with him is insufficient to pay; if the conviction is quashed, the Judge shall order a return of the money deposited, and shall have authority to order payment of such sum for costs as he may tax and allow, and unless the sum is paid by the complainant, the Justice shall issue his warrant to levy the costs. 38 V. c. 11, s. 6.

The case of conviction and penalty of imprisonment or conviction affirmed, or appeal not prosecuted.

9. If by the conviction it is adjudged that the person convicted should be imprisoned, and the conviction is affirmed, or amended and affirmed, or the person convicted fails duly to prosecute the appeal, the Judge shall issue his warrant (Form 4) for the commitment to the proper gaol or other place of imprisonment of the person convicted, and unless such person, within one week thereafter, surrenders himself into the custody of the constable or other officer entrusted with the execution of the warrant, the condition of the recognizance shall be deemed broken, and the recognizance forfeited; and upon proof of the default being made by affidavit of the officer or otherwise, the Judge may certify (Form 5) the default on the back of the recognizance, and shall thereupon transmit the recognizance to the Clerk of the Peace;

2. Such recognizance shall be thereafter proceeded upon at the General Sessions of the Peace in the same manner as a recognizance taken upon an appeal to the Sessions from a summary conviction may be proceeded upon; and the said certi-

ificate shall be deemed sufficient *prima facie* evidence of the default of the defendant; but such proceedings shall not relieve the person convicted from undergoing the term of imprisonment to which he was sentenced; and the warrant of the Judge issued in that behalf, or any new warrant issued by him, may be executed in any part of Ontario in the same manner and subject to the like conditions as a warrant of a Justice of the Peace for the apprehension of an offender. 38 V. c. 11, s. 7.

**10.** If by the conviction only a money penalty is imposed, the Judge, upon being satisfied by affidavit or otherwise that default has been made upon a recognizance given on an appeal in such a case, shall certify in like manner, as is provided in the preceding section, and similar proceedings shall thereupon be had in respect of such recognizance. 38 V. c. 11, s. 8.

The case of conviction and money penalty and default on recognizance.

**11.** In case it is proved to the satisfaction of the Judge that the person convicted had previously served a portion of his term, the Judge shall only issue his warrant for the commitment of the defendant for the residue of the term of imprisonment to which he was sentenced. The Judge may, if he thinks fit, transmit his said warrant to the convicting Justice in order that he may place the same in the hands of a constable for execution. 38 V. c. 11, s. 9.

Service of portion of term of imprisonment before order made on appeal.

Transmission of Judge's warrant.

**12.** Any warrant issued under this Act may be directed in the same manner, and executed by the like officers, as a warrant of commitment upon a summary conviction made under a statute of the Parliament of Canada. 38 V. c. 11, s. 10.

Warrants, direction and execution of.

**13.** In all cases of appeal to a County Court Judge from any summary conviction had before any Justice, the Judge to whom such appeal is made shall hear and determine the charge or complaint on which such conviction has been had, upon the merits, notwithstanding any defect of form or otherwise in such conviction; and if the person charged or complained against is found guilty, the conviction shall be affirmed, and the Judge shall amend the same if necessary. 38 V. c. 11, s. 11.

Hearing on appeal to be on the merits.

Power to amend.

**14.** The Justice shall retain any moneys deposited with him as aforesaid for the period of six months, unless judgment is sooner given; and upon the judgment in appeal being given, or upon the expiration of six months from the day of the date of the conviction, the Justice shall pay over such moneys to the person or persons entitled thereto, in accordance with the judgment; and if the judgment in appeal is not delivered within six months from the day of the date of the conviction, the conviction shall stand, but the respondent shall not be entitled to any costs of the appeal; and in case imprisonment was adjudged by the conviction, the convicting Justice shall, or any other Justice may, issue his warrant for the commitment of the person convicted for any portion of the term which he has not

Dealing with money deposited.

The case of judgment not given within six months from conviction.

Judgment of imprisonment.



served, and no further proceedings shall be taken on the appeal. 38 V. c. 11, s. 12.

No conviction affirmed invalid for want of form, or defect in warrant or commitment.

**15.** No conviction affirmed or amended and affirmed on appeal by the County Court Judge shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty's Superior Courts of Record; and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the party has been convicted, and there is a good and valid conviction to sustain the same. 38 V. c. 11, s. 13.

Conviction on the merits not appealed against, not to be invalid for want of form.

**16** In all cases where it appears by the conviction that the person convicted has appeared and pleaded, and the merits have been tried, and that such person has not (in manner hereinbefore provided) appealed against the conviction where an appeal is allowed, or if appealed against, that the conviction has been affirmed, or amended and affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as is agreeable to the justice of the case. 38 V. c. 11, s. 14.

Powers of the Judge.

**17.** In all process and proceedings before the Judge of the County Court under this Act, the Judge shall, with reference to the matters herein contained, have all the powers which belong to or might be exercised by him in the County Court; and all necessary process may be issued from the office of the Clerk of the County Court. 38 V. c. 11, s. 15.

Issuing of process.

Forms.

**18.** The several forms in the Schedule to this Act contained, varied to suit the case, or forms to the like effect, shall be deemed good, valid and sufficient in law. 38 V. c. 11, s. 16.

## SCHEDULE OF FORMS.

### FORM 1.

(Section 3.)

RECOGNIZANCE TO TRY THE APPEAL; TO BE TAKEN ONLY WHERE A MONEY PENALTY IS IMPOSED.

Province of Ontario, }  
County of }

Be it remembered, that on \_\_\_\_\_, A.B., of \_\_\_\_\_ (Labourer), and L.M., of \_\_\_\_\_ (Grocer), and O.P., of \_\_\_\_\_ (Yeoman), personally came before me (or us) undersigned one (or two) of Her Majesty's Justices of the Peace in and for the said County of \_\_\_\_\_ (or United Counties, as the case may be), and

severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say, the said *A. B.* the sum of \_\_\_\_\_, and the said *L. M.* and *O. P.* the sum of \_\_\_\_\_ each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he the said *A. B.* shall fail in the condition hereunder written (*or endorsed*).

Taken and acknowledged the day and year first above mentioned at \_\_\_\_\_, before me (*or us*).

J. S.

Whereas the said *A. B.* was on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, convicted before *C. D.* (and *E. F.*) one (*or two*) of Her Majesty's Justices of the Peace for the said County (*or United Counties*), for that (*stating the substance of the conviction*):

And whereas the said *A. B.* has undertaken to appeal against the said conviction to the Judge of the County Court of the County of \_\_\_\_\_ (*or United Counties of* \_\_\_\_\_):

Now the condition of the above (*or within*) recognizance is such that if the said *A. B.* shall, within one month from the date of the said conviction, obtain from the said Judge a summons calling upon the County Crown Attorney and the prosecutor to show cause why the said conviction should not be quashed, and shall duly prosecute the said appeal, and shall abide by and duly perform the order of the Judge to be made upon the trial of such appeal, and shall pay such costs as the said Judge shall order, then the said recognizance to be void, and otherwise to remain in full force and virtue.

## FORM 2.

(Section 3.)

RECOGNIZANCE TO TRY THE APPEAL; TO BE TAKEN WHERE IMPRISONMENT IS IMPOSED.

Province of Ontario,           {  
County of                        {

Be it remembered, that (*proceed as in Form 1 to the end, and add the following additional condition*):—

And further, that if the said *A. B.*, in case the conviction is affirmed, or amended and affirmed, shall surrender himself into the custody of the constable or other officer entrusted with the execution of the warrant, within one week after the Judge shall issue his warrant for the commitment of the said *A. B.*, then the said recognizance to be void, and otherwise to remain in full force and virtue.

## FORM 3.

(Section 4.)

WARRANT OF DELIVERANCE WHERE DEFENDANT IS IN CUSTODY, AND  
ENTITLED TO BE LIBERATED.

Province of Ontario, {  
County of }

To the Keeper of the Common Gaol of the County of  
(or United Counties of, or to *E. F.*, the constable  
having in his custody *A. B.* hereinafter named, or as the case may  
require).

Whereas *A. B.* has before one (or two) of Her Majesty's Justices of the  
Peace in and for the said County (or United Counties) of  
entered into his own recognizance and found sufficient sureties to prose-  
cute before the Judge of the County Court of the County (or United  
Counties) of , an appeal from a conviction had before me  
(or us) for that (*stating the substance of the conviction*), for which the said  
*A. B.* was committed to your custody :

These are therefore to command you, in Her Majesty's name, that if  
the said *A. B.* do remain in your custody for the said cause and for no  
other, you shall forthwith suffer him to go at large.

Given under my (or our) hand and seal (or hands and seals) this  
day of , in the year of our Lord , at  
, in the County (or United Counties) aforesaid.

J. S. { L.S. }

J. N. { L.S. }

## FORM 4.

(Section 9.)

WARRANT OF THE JUDGE OF THE COUNTY COURT WHEN IMPRISONMENT  
ADJUDGED AND CONVICTION AFFIRMED.

Province of Ontario, {  
County of }

To all or any of the Constables and other Peace-Officers in the said County,  
and to the Keeper of the Common Gaol of the said County.

Whereas *A. B.*, late of (Labourer), was on or about the  
day of convicted before J. S., one of Her  
Majesty's Justices of the Peace in and for the said County, for that (*stat-  
ing the offence*), and it was thereby adjudged (*stating the judgment*): And  
whereas the said *A. B.* has appealed against the said conviction to me,  
*H. K.*, the Judge of the County Court of the said County of :

and whereas, after hearing the said appeal, I, the said *H. K.*, have affirmed the said conviction (or have amended the said conviction as follows: *stating the amendment made*, and have affirmed the said conviction as so amended):

These are therefore to command you, the said Constables or Peace Officers, or any of you, to take the said *A. B.*, and him safely to convey to the Common Gaol at \_\_\_\_\_, and there to deliver him to the Keeper thereof, together with this warrant; And I do hereby command you, the said Keeper of the said Common Gaol, to receive the said *A. B.* into your custody in the said Common Gaol, there to imprison him (and to keep him at hard labour) for the space of \_\_\_\_\_, being the term (or being the portion yet unserved of the term) mentioned in the said conviction; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the County of \_\_\_\_\_.

H. K.

L.S.

#### FORM 5.

(Section 9.)

#### CERTIFICATE OF DEFAULT TO BE ENDORSED ON THE RECOGNIZANCE.

I hereby certify that the within-named *A. B.* has not surrendered himself (*stating according to the fact the default on account of which the recognizance is forfeited*) in accordance with the condition of the within recognizance, but therein has made default, by reason whereof the said recognizance is forfeited.

H. K.

## CHAPTER 76.

### An Act respecting Returns of Convictions and Fines by Justices of the Peace.

#### Returns of Convictions :

- When to be made, s. 1.
- Form, s. 1.
- What to contain, s. 2.
- Penalty for neglect, ss. 3, 4.

#### Publication of returns by Clerks of

- Peace, s. 5.
- Recording returns, s. 6.
- Copy to be sent to Provincial Treasurer, s. 7.
- Other returns, s. 8.





records of his office. C. S. U. C. c. 124, s. 1; 32 V. c. 6, s. 9 (4); 40 V. c. 7, *Sched. A* (112).

**3.** In case the Justice or Justices, before whom any such conviction takes place, or who receive any such moneys, neglect or refuse to make such return thereof, or in case any such Justice or Justices wilfully make a false, partial or incorrect return, such Justice or Justices so neglecting, or refusing, or wilfully making such false, partial or incorrect return, shall forfeit and pay the sum of eighty dollars, together with full costs of suit, to be recovered by any person who sues for the same by action of debt (or information) in any Court of Record in the Province, one moiety whereof shall be paid to the party suing, and the other moiety into the hands of the Treasurer of the Province, to and for the public uses of the Province. C. S. U. C. c. 124, s. 2.

Penalties on Justices of the Peace neglecting to comply with the provisions of this Act as to returns, &c.

**4.** All prosecutions for penalties arising under the provisions of the next preceding section shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the County or place wherein such penalties have been incurred; and if a verdict or judgment passes for the defendant, or the plaintiff becomes nonsuited or discontinues the action after issue joined, or if upon demurrer, or otherwise, judgment is given against the plaintiff, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as any defendant has by law in other cases. C. S. U. C. c. 124, s. 3.

Actions for such penalties limited to six months after cause of action accrues.

**5.** The Clerk of the Peace of the County in which any such returns are made shall, within two weeks after the times hereby limited for the making of said returns, cause the same to be published in one public newspaper in the County, or if there is no such newspaper, then in a newspaper of an adjoining County, and shall also within the said period fix up in the Court House of the County, and also in a conspicuous place in the office of the Clerk of the Peace, for public inspection, a Schedule of the returns so made by the Justices; and the same shall continue to be so fixed up and exhibited until the end of the next ensuing General Sessions of the Peace; and for every Schedule so made and exhibited by the Clerk of the Peace, he shall be allowed in his accounts with the County the fee of four dollars, besides the expense of publication, all of which shall be paid by the Treasurer of the County. C. S. U. C. c. 124, s. 4; 32 V. c. 6, s. 9 (4).

Clerk of the Peace, &c., to publish and post up the returns so made.

**6.** All returns so received by the Clerks of the Peace shall be entered of record by them quarterly, in the same manner as formerly recorded at Quarter Sessions; and the duties, liabilities, fees and emoluments of the Clerks of the Peace in respect thereof, shall continue the same as if such returns had been made to the Court of General Sessions, until otherwise varied by competent authority. 40 V. c. 8, s. 44.

Entry of returns by Clerks of the Peace.

Copy of re-  
turns to be  
sent to Provin-  
cial Treasurer.

7. The Clerk of the Peace of each County, within twenty days after the end of each General Sessions of the Peace, shall transmit to the Treasurer of the Province a true copy of all such returns made within his County. C. S. U. C. c. 124, s. 5 ; 32 V. c. 6, s. 9 (4).

This Act not  
to dispense  
with other  
necessary re-  
turns.

8. Nothing herein contained shall exonerate Justices of the Peace from duly returning to the General Sessions of the Peace of their respective Counties, any convictions, or records of convictions, which are by law required to be so returned. C. S. U. C. c. 124, s. 6.

## CHAPTER 77.

### An Act respecting the Fees of Justices of the Peace.

Fees for certain services, s. 1.

Fees where not otherwise regulated  
by statute, s. 2.

No fees in cases above misdemean-  
ors, s. 3.

Penalty for receiving unauthorized  
fees, s. 4.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Fees receiv-  
able for cer-  
tain services.

1. The fees mentioned in Schedule A. to this Act, and no others, shall be and constitute the fees to be taken by Justices of the Peace, or by their Clerks, for the duties and services therein mentioned. C. S. U. C. c. 119, s. 11.

Fees in cases  
not expressly  
prescribed.

2. The costs to be charged in all cases of convictions, where the fees are not expressly prescribed by any statute, shall be those contained in Schedule B. to this Act. C. S. U. C. c. 119, ss. 12-14.

Fees not allow-  
ed in cases  
above misde-  
meanors.

3. This Act shall not authorize any claim being made by the Justices aforesaid, for fees of any description connected with cases above the degree of misdemeanor. C. S. U. C. c. 119, s. 15, *part*.

4. Any Justice or Justices wilfully receiving a larger amount of fees than by law are authorized to be received, shall forfeit and pay the sum of eighty dollars, together with full costs of suit, to be recovered by any person who sues for the same by action of debt or by information in any Court of Record in the Province, one moiety whereof shall be paid to the party suing, and the other moiety to the Treasurer of the Province, to and for the public uses of the Province. C. S. U. C. c. 124, s. 2.

Penalty on  
Justices for  
taking unau-  
thorized fees.

## SCHEDULE "A."

(Section 1.)

TABLE OF FEES TO BE TAKEN BY JUSTICES OF THE PEACE OR THEIR CLERKS IN THE CASES MENTIONED IN SECTION 1.

1. For an Information and Warrant for apprehension, or for an Information and Summons for assault, trespass, or other misdemeanor .....	\$0 50
2. For each copy of Summons to be served on defendant or defendants .....	10
3. For a <i>Subpoena</i> , (only one Subpoena on each side to be charged for in each case, which may contain any number of names.) .. (If the justice of the case requires it, additional Subpoenas shall be issued without charge.) .....	10
4. For every Recognizance, (only one to be charged in each case) .....	25
5. For information and Warrant for surety of the peace for good behaviour, (to be paid by Complainant) .....	50
6. For Warrant of Commitment for default of surety to keep peace or good behaviour, (to be paid by Complainant) .....	50

C. S. U. C. 119, s. 11.

## SCHEDULE "B."

(Section 2.)

TABLE OF FEES TO BE TAKEN BY JUSTICES OF THE PEACE OR THEIR CLERKS IN CASES OF CONVICTIONS WHERE FEES ARE NOT PRESCRIBED BY ANY OTHER STATUTE.

1. For Information and Warrant for apprehension, or for Information and Summons for service .....	\$0 50
2. For every copy of Summons to be served upon defendant or defendants .....	10
3. For every <i>Subpoena</i> to a Witness, (only one Subpoena on each side to be charged for in each case, which may contain any number of names.) .. (If the justice of the case requires it, additional Subpoenas shall be issued without charge.) .....	10



4. For hearing and determining the case .. . . .	50
5. For Warrant to levy penalty .. . . .	25
6. For making up every Record of Conviction where the same is ordered to be returned to the Sessions, or on <i>certiorari</i> .. . . .	1 00
7. For copy of any other paper connected with any trial, and the minutes of the same if demanded—per folio of one hundred words.....	10
8. For every Bill of Costs, ( <i>when demanded to be made out in detail</i> ) .. . . .	10

C. S. U. C. c. 119, ss. 12 & 14.

9. But in all cases which admit of a summary proceeding before a single Justice of the Peace, and wherein no higher penalty than twenty dollars can be imposed, there only shall be charged for the conviction not more than .. . . .	50
And for the warrant to levy the penalty .. . . .	25
10. And in all cases where persons are subpoenaed to give evidence before Justices of the Peace in cases of assault, trespass or misdemeanor, the witness shall be entitled, in the discretion of the Justice, to receive for every day's attendance, where the distance travelled in coming to and returning from such adjudication does not exceed ten miles.....	50
And for each mile above ten .. . . .	05

C. S. U. C. 119, s. 13.

## 2. Other Officers of Justice.

## CHAPTER 78.

### An Act respecting County Crown Attorneys.

Preliminary, ss. 1,2.	To examine informations, s. 9 (1).
Appointment of County Crown Attorneys, ss. 3-4.	To secure attendance of witnesses, s. 9 (1).
Security, s. 5.	To institute and conduct prosecutions at Sessions and County Judge's Criminal Court, s. 9 (2).
Oath, s. 6.	To watch private prosecutions and intervene if necessary, s. 9 (3).
Not to act for prisoners, s. 7.	
Duties :—	
Generally, s. 8.	

To attend Crown officer at Assizes, and in his absence conduct prosecutions, s. 9 (4).	by Order in Council, s. 9 (7). To have custody of informations, &c., s. 10.
To conduct summary prosecutions relating to the revenue, s. 9 (5).	Power of Lieut-Governor in Council to regulate duties, s. 11.
To advise Justices, s. 9 (6).	Appointment of a substitute, s. 12.
To perform duties assigned to him	Fees, ss. 13-17.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Local Crown Attorneys* Short title. Act."

2. Unless there is something in the context repugnant to such construction, the word "Assizes," when used in this Act, shall be understood to mean the Courts of Assize, Nisi Prius, Oyer and Terminer and General Gaol Delivery, and the sittings of any of those Courts. C. S. U. C. c. 106. s. 12, Interpretation clause.

3. The Lieutenant-Governor shall appoint a Crown Attorney for each County in Ontario, to hold office during pleasure, and upon the death, resignation or removal of a County Crown Attorney, shall supply the vacancy. C. S. U. C. c. 37, s. 2, Lieutenant-Governor to appoint, remove, etc.

4. No person shall be appointed a County Crown Attorney, or shall act in that capacity, who is not a barrister-at-law of at least three years' standing at the Bar of Ontario, and a resident in the County for which he is appointed. C. S. U. C. c. 37, s. 3, Who qualified to be appointed.

5. Every County Crown Attorney hereafter appointed shall give security for the due performance of the duties of his office, and for the due payment of all moneys received by him by virtue thereof, in such sum, and with so many sureties, and in such manner and form as the Lieutenant-Governor directs. C. S. U. C. c. 20, s. 2, County Crown Attorneys to give security.

6. No County Crown Attorney shall be qualified to act as such until he has taken, before some County Judge, the following oath, that is to say: To take oath of office.

"I do swear that I will truly and faithfully, according to the best of my skill and ability, execute the several duties, powers and trusts of County Crown Attorney for the County of \_\_\_\_\_, without favour or affection to any party: So help me God." The oath.

C. S. U. C. c. 106, s. 2.

7. No County Crown Attorney shall by himself or his partner in business, act or be directly or indirectly concerned as counsel or attorney for any prisoner or party, in respect to any charge against such prisoner or party of treason, felony or other offence, Not to act as counsel for prisoners.

punishable under the criminal law in force in this Province. C. S. U. C. c. 37, s. 4.

Duties generally.

8. The County Crown Attorney for each County, shall aid in the local administration of justice, and perform the duties by this Act or any other Act, either of Canada or of this Province assigned to County Crown Attorneys. C. S. U. C. c. 37, s. 1.

Special duties.

9. Every County Crown Attorney—

To receive and examine informations, etc.

1. Shall receive and examine all informations, examinations, depositions, recognizances, inquisitions and papers connected with criminal charges which the Justices of the Peace and Coroners of the County are hereby required to transmit to him—and where necessary, he shall cause such charges to be further investigated, and additional evidence to be collected if required,—and shall also sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions at the Assizes, General Sessions and County Judge's Criminal Court may not be unnecessarily delayed or fail through want of proof that might be secured; C. S. U. C. c. 106, s. 1 (1).

To secure attendance of witnesses.

To institute and conduct prosecutions at Sessions;

2. He shall institute and conduct on the part of the Crown prosecutions for felonies and misdemeanors at the Court of General Sessions, and the County Judge's Criminal Court for the County he is appointed to, in the same manner as the Law Officers of the Crown institute and conduct similar prosecutions at the Assizes, and with like rights and privileges, except as to the right of entering a *nolle prosequi*, and generally he shall attend to all criminal business at the Court of General Sessions and the County Judge's Criminal Court; C. S. U. C. c. 106, s. 1 (2); 32 V. c. 6, s. 10.

And County Judges Criminal Court.

Watch over certain cases brought by private prosecutors.

3. He shall watch over the conduct of cases at the Court of General Sessions wherein it is questionable if the conduct complained of be punishable by law, or where the particular act or omission presents more of the features of a private injury than a public offence; and without unnecessarily interfering with private individuals who wish in such cases to prosecute, may assume wholly the conduct of the case where justice towards the accused seems to demand his interposition. C. S. U. C. c. 106, s. 1 (3).

To deliver papers connected with criminal business at Assizes to Crown Officer.

4. He shall deliver to the Crown Officer or Counsel appointed by the Attorney-General, all papers connected with the criminal business at the Assizes on or before the opening of the Court; he shall be present at such Court, and, if required, shall assist such Crown Officer or Counsel with the criminal business, and in the absence of the Law Officers of the Crown and of such Counsel, he shall represent the Crown, and take the charge and conduct of the criminal business to be done at the Assizes for his County. C. S. U. C. c. 106, s. 1 (4).

When to officiate thereat.

5. If required by the general regulations touching his office to be made in pursuance of the provisions hereinafter contained, he shall institute and conduct proceedings before Justices of the Peace under any act or law conferring summary powers to convict, for offences in relation to the public revenue, the public property, the public domain, the public peace, the public health, and any other matter made punishable on summary conviction before Justices of the Peace; and the County Crown Attorney is hereby empowered to institute such proceedings, on a complaint in writing, or as public prosecutor, in cases wherein the public interests require the exercise of such office; C. S. U. C. c. 106, s. 1 (5).

To institute and conduct summary proceedings before Justices of the Peace where the Public Revenue, etc., is concerned.

6. If by any Justice of the Peace requested in writing containing a statement of the particular case, he shall advise and instruct such Justice in respect to criminal offences brought before him for preliminary investigation or for adjudication; C. S. U. C. c. 106, s. 1 (6).

To advise Justices of the Peace at their request.

7. He shall perform all such duties and services as the Lieutenant-Governor, by regulations in Council, from time to time prescribes and directs for carrying out the provisions of any Act imposing duties upon County Crown Attorneys, and also touching the office of County Crown Attorney and the prosecution of criminal offenders. C. S. U. C. c. 106, s. 1 (7).

To perform duties to be assigned by regulations in Council.

10. In every case where a person is committed for trial, or bailed to answer to a criminal charge, the Justice of the Peace so committing or bailing shall deliver or cause to be delivered without delay to the County Crown Attorney the informations, depositions, examinations, recognizances and papers connected with the charge; and subject to the provisions of the second section of chapter seventy-four of these Revised Statutes, the County Crown Attorney shall be deemed the "proper officer" of the Courts within the meaning of the Statutes of Canada, *respecting the duties of Justices of the Peace out of Sessions in relation to persons charged with indictable offences*, and in every case of inquisition found before Coroners, the inquisition and every recognizance taken before them, with the written information (if any), and the depositions and statements (if any) of the accused, shall be forthwith delivered to the Crown Attorney of the County in which such inquisition has been found; and in every case in which an information has been laid or complaint made before a Justice of the Peace, whether proceedings have been taken therein or not, such Justice shall hand over to the County Crown Attorney all papers connected therewith, on being by him required so to do. C. S. U. C. c. 106, s. 9. *See also Rev. Stat. c. 79, s. 13.*

Justices committing or bailing on criminal charges, to deliver informations, etc., to County Crown Attorney, who shall be "the proper officer," within 32-3 V. c. 30 (D), &c.

Like provision in case of inquisitions before Coroners.

And in other cases on requisition of County Crown Attorney.

11. The Lieutenant-Governor in Council may from time to time make such general regulations as to him seem expedient, for carrying out the provisions of any Act imposing duties upon

Lieutenant-Governor in Council to make regula-



tions as to duties of County Crown Attorney, etc.

County Crown Attorneys, and also touching the office of County Crown Attorney, and for the prosecution of offenders against the criminal laws of this Province, and may from time to time alter such regulations. C. S. U. C. c. 106, s. 6.

Case of unavoidable absence or illness of County Crown Attorney provided for.

**12.** In case of the illness or unavoidable absence of the County Crown Attorney, the Judge of the County Court of the County may appoint some barrister-at-law to act for such County Crown Attorney during such illness or absence, and notice of the appointment and of the cause thereof shall be sent by such County Crown Attorney to the Lieutenant-Governor, who may at any time annul such appointment. C. S. U. C. c. 106, s. 8.

Fees in cases conducted by him at trial, where costs are paid by defendant.

**13.** In every case of misdemeanor tried at the Court of General Sessions, in which costs are or may be ordered to be paid by a defendant, the County Crown Attorney shall be entitled to fees as attorney and counsel for services rendered in such case, to be taxed by the Court according to the scale of allowance in the County Courts as nearly as the nature of such services will allow; such fees in case of conviction to form part of the costs payable by a defendant. C. S. U. C. c. 106, s. 3.

And in case of felony or misdemeanor when costs are not paid by defendant.

**14.** In all cases of felony tried as aforesaid, and in all cases of misdemeanor in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the defendant, the County Crown Attorney shall be entitled to receive for the services rendered by him in each such case the sum of five dollars, to be paid upon certificate of the Judge presiding at the Court of General Sessions, and to form a portion of the expenses of the administration of criminal justice in Ontario. C. S. U. C. c. 106, s. 4.

Fees in County Judges' Criminal Court.

**15.** For services in the County Judges Criminal Court, the County Crown Attorney shall be entitled to the same fees as for like services at the Court of General Sessions of the Peace. 33 V. c. 10, *Table of Fees*.

Four per cent; to be allowed to County Crown Attorney on money coming into his hands.

**16.** Every County Crown Attorney shall be allowed a percentage of four dollars on every one hundred dollars of all public moneys coming into his hands. C. S. U. C. c. 106, s. 10.

Account to be rendered by him.

**17.** Every County Crown Attorney shall, on or before the tenth day of February in each year, render an account to the Treasurer of the Province, under oath, of all emoluments received by him by virtue of his office for the year then next preceding. C. S. U. C. c. 106, s. 5.

## CHAPTER 79.

## An Act respecting Coroners.

Appointment, s. 1.

Inquests when to be held, ss. 2, 3.

Powers of Coroners :

Summoning witnesses, s. 4, 5.

Procuring evidence of medical men  
and medical analysis, ss. 6-10.

Other powers, s. 11.

Defects of form in inquisitions, s. 12.

Returns of inquisitions, &c. ss. 13, 14.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

**1.** The Lieutenant-Governor may, whenever he thinks fit, appoint, under the Great Seal, one or more Coroners in and for every County, City and Town in the Province of Ontario, and for any Provisional Judicial, Temporary Judicial, or Territorial District, or Provisional County, or for any portion of the territory of Ontario, not attached to a County for ordinary municipal and judicial purposes. 31 V. c. 18, s. 1; 36 V. c. 48, s. 305; 37 V. c. 7, s. 65 & 71. *See also Rev. Stat.* c. 90, s. 46.

Appointment  
by the Lt.-  
Governor.

**2.** Except as provided in the next section, no inquest shall be held on the body of any deceased person by any Coroner until it has been made to appear to such Coroner that there is reason to believe that the deceased died from violence or unfair means, or by culpable or negligent conduct, either of himself or of others, under such circumstances as require investigation, and not through mere accident or mischance. C. S. U. C. c. 125, s. 1.

In what cases  
only inquests  
shall be held.

**3.** Upon the death of any prisoner, the Warden, Gaoler, Keeper or Superintendent of any Penitentiary, Gaol, Prison, House of Correction, Lock-up house, or House of Industry in which such prisoner dies, shall immediately give notice thereof to some Coroner of the County, City or Town in which such death has taken place, and such Coroner shall proceed forthwith to hold an inquest upon the body. C. S. U. C. c. 125, s. 2; 26 V. c. 42, s. 1.

Proceedings in  
case of the  
death of any  
prisoner.

**4.** If any person, having been duly summoned as a juror to serve, or as a witness to give evidence upon any Coroner's inquest, does not, after being openly called three times, appear and serve as such juror, or appear and give evidence as such witness, the Coroner may impose a fine upon the delinquent

Penalty on  
persons  
summoned to  
attend inquest  
and not  
attending.

person not exceeding four dollars; and shall thereupon make out and sign a certificate, containing the name, residence and trade or calling of such person, the amount of the fine imposed, and the cause of the fine, and shall transmit such certificate to the Clerk of the Peace of the County in which such person resides, on or before the first day of the General Sessions of the Peace then next ensuing, and shall cause a copy of such certificate to be served upon such person by leaving it at his residence, within a reasonable time after the inquest. C. S. U. C. c. 125, s. 3.

And how  
enforced.

5. The fine so certified shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects, as if it had been part of the fines imposed at such General Sessions. C. S. U. C. c. 125, s. 4.

Coroner may  
summon a  
medical prac-  
titioner to at-  
tend at any in-  
quest.

6. Wherever, upon the summoning or holding of any Coroner's inquest, the Coroner finds that the deceased was attended during his last illness, or at his death, by any legally qualified medical practitioner, the Coroner may issue his order for the attendance of such practitioner as a witness at such inquest in the form following:

CORONER'S INQUEST AT \_\_\_\_\_, UPON THE BODY OF \_\_\_\_\_.

By virtue of this my order, as Coroner for \_\_\_\_\_, you are required to appear before me and the Jury, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, to give evidence touching the cause of the death of \_\_\_\_\_ [and when the witness is required to make or assist at a post mortem examination, add: and make or assist in making a post mortem examination of the body, with (or without) an analysis (as the case may be), and report thereon at the said Inquest.]

Signed, C. P.,  
Coroner.

C. S. U. C. c. 125, s. 7.

If the Coroner  
finds that the  
deceased was  
not so attended  
etc.

7. If the Coroner finds that the deceased was not so attended, he may issue his order for the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death happened; and the Coroner may, at any time before the termination of the inquest, direct a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness summoned to attend at such inquest; but if any person states upon oath before the Coroner, that in his belief the death was caused partly or entirely by the improper or negligent treatment of a medical practitioner or other person, such medical practitioner or other person shall not assist at the *post mortem* examination. C. S. U. C. c. 125, s. 8.

A majority of  
the jurymen  
may require  
the Coroner: to

8. Wherever it appears to the majority of the jurymen sitting at any Coroner's inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical

practitioner or other witnesses examined in the first instance, such majority may name to the Coroner, in writing, any other legally qualified medical practitioner or practitioners, and require the Coroner to issue his order in the form hereinbefore mentioned for the attendance of such last mentioned medical practitioner or practitioners, as a witness or witnesses, and for the performance of such *post mortem* examination as in the last preceding section mentioned, and whether before performed or not. C. S. U. C. c. 125, s. 9.

summon another medical practitioner.

[*The original section adds :—*

And if the Coroner refuses to issue such order he is guilty of a misdemeanor, and shall be punishable by a fine not exceeding forty dollars, or by imprisonment not exceeding one month, or by both fine and imprisonment.]

Penalty on Coroner refusing.

9. Where any legally qualified medical practitioner has attended in obedience to any such order as aforesaid, he shall receive for such attendance, if without a *post mortem* examination, five dollars; if with a *post mortem* examination, without an analysis of the contents of the stomach or intestines, ten dollars; if with such analysis, twenty dollars; together with the sum of twenty cents per mile for each mile he has to travel to and from such inquest, such travel to be proved by his own oath to the Coroner, who may administer the same; and the Coroner shall make his order on the Treasurer of the County in which the inquest is holden, in favour of such medical practitioner, for the payment of such fees or remuneration, and such Treasurer shall pay the sum mentioned in such order to such medical witness out of any funds he may then have in the County treasury. C. S. U. C. c. 125, s. 10.

Allowance to such medical practitioner.

To be paid on Coroner's order, and by whom.

10. Where any such order for the attendance of any medical practitioner has been personally served, or if not personally served, has been received by him or left at his residence in sufficient time for him to have obeyed such order, and he has not obeyed the same, he shall forfeit the sum of forty dollars upon complaint by the Coroner who held or by any two of the jury who sat on the inquest, made before any two Justices of the Peace of the County where the inquest has been held, or of the County where such medical practitioner resides; and such Justices shall proceed to hear and adjudicate upon the complaint; and if such medical practitioner does not show a sufficient reason for not having obeyed such order, they shall enforce the said penalty by distress and sale of the offender's goods in the same manner as they are empowered to do by *The Act respecting Summary Convictions before Justices of the Peace*. C. S. U. C. c. 125, s. 11.

Penalty on practitioners summoned and failing to attend.

Rev. Stat. c. 74.

11. Nothing herein contained shall affect any power otherwise by law vested in any Coroner for compelling any person to appear and give evidence before him, or for punishing any person

Former powers of the Coroner not to be affected.



for contempt of Court, in not so appearing and giving evidence or otherwise. C. S. U. C. c. 125, s. 5.

Omission of unnecessary words, &c., not to vitiate any inquisition.

**12.** No inquisition found upon or by any Coroner's inquest, nor any judgment recorded upon or by virtue of any such inquisition, shall be quashed, stayed or reversed for want of the averment therein of any matter unnecessary to be proved, nor for the omission of any technical words of mere form; and in all cases of technical defect, either of the Superior Courts of Common Law, or any Judge thereof, or any Judge of Assize or Gaol Delivery, may, upon any such inquisition being called in question before them or him, order the same to be amended. C. S. U. C. c. 125, s. 6.

Return of inquisitions to County Crown Attorney.

**13.** Every Coroner shall forthwith after an inquisition found before him return the same and every recognizance taken before him, with the written information (if any) and the depositions and statements (if any) of the accused, to the Crown Attorney of the County in which the inquisition has been found. C. S. U. C. c. 106, s. 9. *See also Rev. Stat. c. 78, s. 10 & s. 9 (1).*

Coroners to return lists of inquests.

**14.** Every Coroner shall, on or before the first day of January in every year, return to the Provincial Treasurer a list of the inquests held by him during the preceding year, together with the findings of the Juries. C. S. C. c. 33, s. 35; 39 V. c. 7, s. 3.

[*For Coroner's fees, see Rev. Stat. c. 84.*]

[*For Duties of Coroners in relation to the Investigation of Accidents by Fire, see Rev. Stat. c. 196.*]

## CHAPTER. 80.

### An Act respecting Commissioners to take Recognizances of Bail.

Appointment, s. 1.  
Filing recognizances, s. 2.  
Excepting to bail, s. 3.  
Judges of Superior Courts of Law may take bail, s. 4.

Judges and Clerks of County Courts may take bail, s. 5.  
Commissioners may take bail in all Courts, s. 6.  
In case of a dissolution of a Union of Counties, s. 7.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The Chief Justice and Justices of the Court of Queen's Bench, or any two of them, of whom the Chief Justice shall be one, and the Chief Justice and Justices of the Court of Common Pleas, or any two of them, of whom the Chief Justice thereof shall be one, or in the event of the death or absence from the Province of the Chief Justice of either of said Courts respectively, then the remaining Justices of the Court of which the Chief Justice has died or is absent, may, by a commission or commissions under the seal of said Courts respectively, from time to time empower so many of the persons from time to time appointed by them under chapter sixty-three of these Revised Statutes to take affidavits, or such and so many other persons as they think fit and necessary to be Commissioners in the several Counties in Ontario, to take and receive all and every such recognizance or recognizances of bail as any person or persons may at any time desire to acknowledge or make in any action or suit depending in either of the said Courts, in such manner and form and by such recognizance of bail as the Judges of the said Courts may take. C. S. U. C. c. 39, s. 3.

Judges may appoint Commissioners for taking recognizances, or recognizances of bail.

Rev. Stat. c. 63.

2. The recognizance or recognizances of bail, or bail piece, so taken as aforesaid, shall be filed in the office of the Clerk or Deputy Clerk of the Crown in the County in which the same has been taken, together with an affidavit of the due taking of the recognizance by some credible person present at the taking thereof. C. S. U. C. c. 39 s. 3.

Recognizance to be filed.

3. Every recognizance so taken and filed shall be of the like effect and subject to exception as to the bail, in like manner and within the same time as if taken in open Court. C. S. U. C. c. 39, s. 4.

Bail so taken may be excepted to.

4. Any Judge of either of said Courts may take recognizances of bail in any civil suit, which recognizances shall be filed as aforesaid without oath, and shall be of the like effect as if taken in open Court. C. S. U. C. c. 39, s. 5.

Any of the said Judges may take bail.

5. The Judges and Clerks of the several County Courts respectively, may take all recognizances of bail required to be taken in their respective Courts. C. S. U. C. c. 39, s. 7.

The Judges and Clerks of County Courts may take bail.

6. Every Commissioner appointed for taking recognizances of bail as aforesaid may in like manner take the same in either of the said Superior Courts and in the County Courts. C. S. U. C. c. 39, s. 6.

Commissioners may take bail in all the Courts.

7. All Commissioners appointed for taking recognizances of bail as aforesaid for any Union of Counties, and resident within the Junior County, at the time of the separation thereof from such Union, may exercise the same powers within such Junior County to take and receive bail, as if they had received their commissions or appointments respectively for such Junior County.

Commissioners for United Counties resident in Junior County may, after separation, act for Junior County.

County at the time of the separation of such Union of Counties. 31 V. c. 11, s. 1.

And for Junior  
County only.

2. No such Commissioner shall have or exercise any such powers by virtue of such commission, save in such Junior County. 31 V. c. 11, s. 2.

## CHAPTER 81.

### An Act respecting Commissioners of Police.

Powers in Ontario of Commissioners  
of Police for Canada, s. 1.  
Powers of Police Constables appoint-  
ed by Commissioners, s. 2.

Commissioners and Constables to  
have no power in municipal mat-  
ters, s. 3.  
Revocation of commissions, s. 4.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Powers of  
Commis-  
sioners of  
Police.

31 V. c. 73 (D).

**1.** Any Commissioner of Police duly appointed under the Great Seal of Canada to be and act as such within the Province of Ontario, (under and by virtue of the Act of the Parliament of Canada passed in the thirty-first year of Her Majesty's reign, chaptered seventy-three, and entitled "*An Act respecting Police of Canada*," ) and authorized in that behalf by commission from the Lieutenant-Governor, under the Great Seal of this Province, shall have and exercise within the several Counties, Temporary Judicial, Provisional Judicial or Territorial Districts, or Provisional Counties within this Province, all the powers and authority, rights and privileges, by law appertaining to Police Magistrates of Cities, and all the powers and authority, rights and privileges appertaining to Justices of the Peace generally; and shall be subject in all respects, except as otherwise provided by this Act, to the requirements of the law of this Province respecting Police Magistrates and the office of Justice of the Peace: But it shall not be necessary for any Commissioner of Police as aforesaid to possess any property qualification or to be actually resident within any County or other territorial division for which the administration of criminal justice is provided, nor shall it be necessary for any such Commissioner of Police to take or subscribe any oath of allegiance or of office within any such County or District. 34 V. c. 16, s. 1.

Qualification  
of Commis-  
sioners.

2. The police constables appointed or employed by such Commissioner of Police shall be charged with all the powers, rights and responsibilities which belong by law to constables duly appointed in this Province, and they shall be subject to such Commissioner of Police, and liable to all the responsibilities, forfeitures and penalties provided by or expressed in the said *Act respecting Police of Canada*. 34 V. c. 16, s. 2. Police constables.  
31 V. c. 73 (D).

3. The said Commissioner or Commissioners of Police, and the said police constables, notwithstanding anything herein to the contrary, shall have no power or authority as regards offences against municipal by-laws, or as such with any other purely municipal matters; and this Province shall not be liable to any charge for the maintenance of such Commissioner of Police or police constables. 34 V. c. 16, s. 3. Commissioners and constables to have no authority in municipal matters.

4. In case the Lieutenant-Governor revokes any commission issued by him under this Act, the authority of any such Commissioner, and of any constable appointed by him, as far as the same are given under or by virtue of this Act, shall forthwith cease. 34 V. c. 16, s. 4. Revocation of commissions.

CHAPTER 82.

An Act respecting Constables.

Appointment by General Sessions of the Peace, s. 1.	Suspension from office, s. 8.
Oath, s. 2.	Appointment by Lieutenant-Governor, ss. 9, 10.
Duration of appointment, s. 3.	Provincial constables, s. 9.
Appointment by County Judge, ss. 4-7.	In the organized Districts, s. 10.
	Exemptions, s. 11.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

APPOINTMENT BY GENERAL SESSIONS.

1. The Justices of the Peace may from time to time, at any sitting or adjourned sitting of the Court of General Sessions of the Peace, appoint a County High Constable, and a sufficient number of fit and proper persons to act as Constables in each Township, incorporated Village, Police Village and place within



Dismissal. their County, and may, in like manner, from time to time, in their discretion, dismiss any Constable so appointed. 23 V. c. 8, ss. 2 & 4; 24 V. c. 48, s. 1; 32 V. c. 6, s. 9 (1).

Constables to be sworn. 2. The persons so appointed shall, before entering on the duties of their office, take and subscribe the following oath, which any Justice of the Peace may administer :

The Oath. "I, \_\_\_\_\_, having been appointed High Constable (or Constable) for the County (or United Counties) of \_\_\_\_\_ do solemnly swear that I will truly, faithfully and impartially perform the duties appertaining to the said office, according to the best of my skill and ability : So help me God."

23 V. c. 8, s. 3.

Continuance in office. 3. Every Constable so appointed, and having taken the aforesaid oath, shall continue in office at least one year, and shall further continue in office from year to year without re-appointment, unless he claims exemption from serving as such Constable, in which case he shall be released at any time after the end of the first year. 23 V. c. 8, s. 4.

#### APPOINTMENT BY COUNTY JUDGE.

Appointment of Constables by County Court Judges. 4. To prevent injurious delay in appointing County Constables, arising from the long intervals between the sittings of the Courts of General Sessions of the Peace—any Judge of a County Court may, at any time, and from time to time, appoint any person or persons to be a Constable or Constables for the County or United Counties of the County Court of which such Judge is a Judge. 40 V. c. 20, s. 1.

To be notified to Clerk of the Peace. 5. The Judge making any such appointment shall forthwith notify the Clerk of the Peace thereof. 40 V. c. 20, s. 2.

To be reported by Clerk to the General Sessions. 6. The Clerk of the Peace shall report every such appointment to the next Court of General Sessions of the Peace which is holden after he receives notice thereof from the said Judge, and unless at such Court such appointment is revoked by order duly passed in Sessions, the same shall continue as if the same had originally been made at such Court. 40 V. c. 20, s. 3.

Authority of such Constables. 7. Any Constable so appointed by a Judge as aforesaid shall during the continuance of such appointment, have the same authority and privileges and be subject to the same liability and the performance of the same duties as if originally appointed by the Court of General Sessions of the Peace. 40 V. c. 20, s. 4.

#### SUSPENSION FROM OFFICE.

Suspension of Constables by. 8. The Judge of the County Court may suspend from office any County Constable for any period, in the discretion of the

Judge, but not beyond one week after the time appointed for the next sittings of the General Sessions of the Peace; such suspension shall be by notice in writing; and in case the Judge considers the suspended officer deserving of dismissal, such Judge shall, immediately after suspending him, report the case fully to the Clerk of the Peace for submission to the Justices at the next General Sessions of the Peace; and the Justices may dismiss such officer, or direct him to be restored to his office, after the period of his suspension has expired, or after such further period of suspension as they may order. 40 V. c. 20, s. 5.

County Court Judge.

#### APPOINTMENT BY LIEUTENANT-GOVERNOR.

##### *Provincial Constables.*

9. The Lieutenant-Governor may appoint, either permanently or for such a period as he may think fit persons to be Provincial Constables, and every person so appointed shall, while he holds office, be a Constable of every County and District in Ontario, and, as such, shall have authority to act in any part of this Province. 40 V. c. 20, s. 6.

Appointment of Provincial Constables by Lieutenant-Governor.

##### *In Unorganized Districts.*

10. The Lieutenant-Governor may, from time to time, appoint Constables for any Provisional Judicial, Temporary Judicial or Territorial District, or Provisional County, or for any portion of the territory of Ontario not attached to a County for ordinary municipal and judicial purposes. 37 V. c. 7, s. 65. See also *Rev. Stat.* c. 90, s. 45.

Appointment of Constables in unorganized Districts.

#### EXEMPTIONS.

11. The officers, non-commissioned officers and men of corps of Volunteers shall, while they continue such, be exempt from serving as Constables; and a certificate under the hand of the officer commanding any such corps shall be sufficient evidence of the service in his corps of any officer, non-commissioned officer or man for the then current year, and of his exemption as aforesaid. 27 V. c. 3, s. 20.

Exemption of Volunteers from serving as Constables.

## CHAPTER 83.

## An Act respecting Special Constables.

Appointment of Special Constables  
in emergencies, ss. 1-4.

Powers, ss. 5-7.

Remuneration, ss. 8-10.

Suspension and determination of ser-  
vices, ss. 11, 12.

Offences and Penalties :

Refusal to act or neglect of duty,  
ss. 13-15.

Resistance to Special Constables,  
C. S. C. c. 104, s. 13, p. 887.

Conviction, form of, s. 16.

Levying of penalties, s. 17.

Defects in form of conviction or  
distress, ss. 18, 19.

Limitation of prosecutions, s. 20.

Application of penalties, s. 21.

Protection of persons acting under  
this Act, ss. 22, 23.

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows :

Any two or  
more Justices  
of the Peace  
empowered to  
appoint  
special con-  
stables in  
certain cases  
of apprehen-  
sion of riot,  
felony, etc.

1. In case it is made to appear to any two or more Justices of the Peace of any territorial division in this Province, upon the oath of any credible witness, that any tumult, riot or felony has taken place or is continuing, or may be reasonably apprehended in any territorial division or place situate within the limits for which the said respective Justices usually act, and in case such Justices are of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants and the security of the property in any such territorial division or place as aforesaid, then and in every such case such Justices or any two or more Justices acting for the same limits may nominate and appoint, by precept in writing under their hands, so many as they think fit of the householders or other persons not legally exempt from serving in the office of Constable, residing in such territorial division or place as aforesaid, or in the neighbourhood thereof, to act as Special Constables for such time and in such manner as to the said Justices respectively seems necessary for the preservation of the public peace and for the protection of the inhabitants and the security of property in such territorial division or place. C. S. C. c. 104, s. 1.

Who may be  
appointed.

Such Justices  
may adminis-  
ter an oath of  
office to the  
person so  
appointed.

2. The Justices of the Peace who appoint Special Constables by virtue of this Act, or any one of them, or any other Justice of the Peace acting for the same limit, may administer to any person so appointed the following oath, that is to say :

" I, A. B., do swear that I will well and truly serve our Sovereign Lady Form of the  
 " the Queen in the office of Special Constable for the of oath.  
 " , without favour or affection, malice or ill-will; and  
 " that I will, to the best of my power, cause the peace to be kept and pre-  
 " served, and will prevent all offences against the persons and properties  
 " of Her Majesty's subjects; and that while I continue to hold the said  
 " office, I will to the best of my skill and knowledge discharge all the  
 " duties thereof faithfully according to law : So help me God."

C. S. C. c. 104, s. 2.

**3.** In case it is deemed necessary to nominate and appoint Special Constables as aforesaid, notice of the nomination and appointment, and of the circumstances which rendered it expedient, shall be forthwith transmitted by the Justice making such nomination and appointment to the Secretary of the Province. C. S. C. c. 104, s. 3.

Notice of such appointment to be sent to Provincial Secretary.

**4.** The Justices of the Peace who appoint any Special Constables under this Act, or any two of them, or the Justices acting for the limit within which such Special Constables have been called out, may, at a special session of such last mentioned Justices, or the major part of such last mentioned Justices, at such special session, make such orders and regulations as may from time to time be necessary and expedient for rendering such Special Constables more efficient for the preservation of the public peace, and may remove any such Special Constable from his office for any misconduct or neglect of duty therein. C. S. C. c. 104, s. 4.

Justices may make regulations touching such special constables,

And may remove any of them.

**5.** Every Special Constable appointed under this Act shall, not only within the territorial division or place for which he has been appointed, but also throughout the entire jurisdiction of the Justices who appoint him, have, exercise and enjoy all such powers, authorities, advantages and immunities, and be liable to all such duties and responsibilities, as any Constable duly appointed has by virtue of any law or statute whatsoever. C. S. C. c. 104, s. 5.

Powers of such special constables, and local extent of such powers.

**6.** Where any Special Constables appointed under this Act are serving within any territorial division or place, and two or more Justices of the Peace of any adjoining territorial division or place, make it appear, to the satisfaction of any two or more Justices of the Peace, acting for the limits within which such Special Constables are serving, that extraordinary circumstances exist which render it expedient that the said Special Constables should act in such adjoining territorial division or place, then and in every such case the said last mentioned Justices may, if they think fit, order all or any of the said Special Constables to act in such adjoining territorial division or place in such manner as to the said last mentioned Justices seems meet. C. S. C. c. 104, s. 6.

Such constables may act in an adjoining division in certain cases.



Their powers in such adjoining division.

**7.** Every such Special Constable, during the time he so acts in such adjoining territorial division or place, shall have, exercise and enjoy all such powers, authorities, advantages and immunities, and be liable to the same duties and responsibilities as if he were acting within the territorial division or place for which he was originally appointed. C. S. C. c. 104, s. 7.

Special constables may be allowed a certain sum per diem for their services.

**8.** The Justices of the Peace acting for the limits within which such Special Constables have been called out to serve, may, at a special session to be held for that purpose, or the major part of the Justices at such special session, may from time to time order such reasonable allowances for their trouble, loss of time and expenses, not exceeding one dollar per diem, to be paid to such Special Constables who have so served or are then serving, as to such Justices or to such major part of them seems proper. C. S. C. c. 104, s. 14.

To be paid by the Treasurer of the Municipality.

**9.** The Justices so ordering shall make every order for the payment of such allowances and expenses upon the Treasurer of the territorial division or other municipal division within which such Special Constables have been called out to serve, and such Treasurer shall pay the same out of any moneys in his hands at the time, and the said Treasurer shall be allowed the same in his accounts, and the sum shall be provided for by the Council of the territorial division or other municipal division wherein the expense arises. C. S. C. c. 104, s. 15.

Special sessions may be adjourned and shall be held legal until the contrary is proved.

**10.** The Justices of the Peace assembled at any special session for any of the purposes mentioned in this Act, may adjourn the same from time to time as they think proper; and every special session actually holden for any of the purposes mentioned in this Act, shall be deemed and taken to have been legally holden until the contrary is proved. C. S. C. c. 104, s. 16.

Justices may suspend or determine the services of special constables.

**11.** The Justices who have appointed any Special Constables under this Act, or the Justices acting for the limits within which such Special Constables have been called out, at a special session to be held for that purpose, or the major part of such last mentioned Justices at such special session, may suspend or determine the service of all or any of the Special Constables so called out, as to the said Justices respectively seems meet; and notice of such suspension or determination of the services of all or any of the said Special Constables shall be forthwith transmitted by such respective Justices to the Secretary of the Province. C. S. C. c. 104, s. 11.

Notice to be sent to the Provincial Secretary.

Special constables to deliver up their staves, &c., when discharged.

**12.** Every such Special Constable shall, within one week after the expiration of his office, or after he has ceased to hold or exercise the same pursuant to this Act, deliver over to his successor, if any such has been appointed, or otherwise to such person and at such time and place as may be directed by any Justice of the Peace acting for the limits within which such

Special Constable has been called out, every staff, weapon and other article which has been provided for such Special Constable under this Act; and if any such Special Constable omits or refuses so to do, he shall, on conviction thereof before two Justices of the Peace, forfeit and pay for such offence such sum of money, not exceeding eight dollars, as to the convicting Justices seems meet. C. S. C. c. 104, s. 12.

Penalty for refusing or neglect.

**13.** If any person being appointed a Special Constable as aforesaid refuses to take the oath hereinbefore mentioned when thereunto required by the Justices of the Peace who so appointed him, or by any two of them, or by any other two Justices of the Peace acting for the same limits, he may be convicted thereof forthwith before the said Justices so requiring him, and shall forfeit and pay such sum of money not exceeding twenty dollars as to the convicting Justices seems meet. C. S. C. c. 104, s. 8.

Penalty on persons appointed and refusing to take the oath.

**14.** If any person, being appointed a Special Constable as aforesaid, neglects or refuses to appear for the purpose of taking the said oath at the time and place for which he has been summoned, he may be convicted thereof before the Justices who appointed him, or any two of them, or before any other two Justices of the Peace acting for the same limits, and shall forfeit and pay such sum of money, not exceeding twenty dollars, as to the convicting Justices seems meet, unless such person proves to the satisfaction of the said Justices that he was prevented by sickness or some unavoidable accident which in the judgment of the said Justices is a sufficient excuse. C. S. C. c. 104, s. 9.

Or to appear at the place appointed for taking such oath.

Sufficient excuse may be allowed.

**15.** If any person having been appointed a Special Constable as aforesaid, and being called upon to serve, neglects or refuses to serve as such Special Constable, or to obey such lawful orders or directions as may be given to him for the performance of the duties of his office, the person so offending shall, on conviction thereof before any two Justices of the Peace, forfeit and pay for every such neglect or refusal such sum of money, not exceeding twenty dollars, as to the said Justices seems meet, unless such person proves to the satisfaction of the said Justices that he was prevented by sickness or some unavoidable accident in the judgment of the said Justices constituting a sufficient excuse. C. S. C. c. 104, s. 10.

Penalty for refusing to act or to obey orders.

Sufficient excuse may be allowed.

[Section 13 of C. S. C. c. 104, is as follows:—

**13.** If any person assaults or resists any Constable appointed by virtue of this Act while in the execution of his office, or promotes or encourages any other person so to do, every such person shall for such offence, on conviction thereof before two Justices of the Peace, forfeit and pay any sum not exceeding forty dollars, or shall be liable to such other punishment upon conviction on an indictment or information for such offence, as persons are by law liable for assaulting a Constable in the execution of the duties of his office. 10, 11 V. c. 12, s. 9.]

Punishment of persons assaulting special constables or encouraging others to do so.

Form of conviction.

**16.** The Justices of the Peace before whom any person is summarily convicted of any offence against this Act may cause the conviction to be drawn up in the following form of words, or to the like effect, that is to say :

To Wit : } Be it remembered, that on the                      day of                      ,  
                              { in the year of our Lord                      , in the                      of                      , in  
the County (or as the case may be) of                      , J. N. is convicted  
before us A. B. and C. D., two of Her Majesty's Justices of the  
Peace for the said County (or as the case may be) of                      ,  
for that he the said J. N., did (here specify the offence, and the time  
and place when and where the same was committed, as the case may be), and  
we do adjudge that the said J. N. shall for the said offence forfeit the  
sum of                      , and shall pay the same immediately (or shall pay  
the same on or before the                      day of                      ) to the  
Treasurer of the                      .

Given under our hands the day and year first above mentioned.

A. B.  
C. D.

C. S. C. c. 104, s. 21.

How penalties may be levied if not paid within the time to be appointed.

**17.** The Justices of the Peace by whom any person is summarily convicted and adjudged to pay any sum of money for any offence against this Act, may adjudge that such person shall pay the same either immediately or within such period as the said Justice thinks fit ; and in case such sum of money is not paid by the time so appointed, the same shall be levied by distress and sale of the goods and chattels of the offender, together with the reasonable charges of such distress ; and for want of sufficient distress, such offender shall be imprisoned in the Common Gaol for any term not exceeding one month when the fine to be paid does not exceed twenty dollars, and for any term not exceeding two months in any other case ; the imprisonment to cease in every case upon payment of the sum due. C. S. C. c. 104, s. 20.

Convictions not to be removed or declared void for want of form, etc.

Nor commitments.

**18.** No conviction for any offence against this Act shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of Her Majesty's Superior Courts of Record : and no warrant of commitment shall be held void by reason of any defect therein, provided it is therein alleged that it is founded on a conviction, and there is a good and valid conviction to sustain the same. C. S. C. c. 104, s. 22.

Similar proceedings as to distress and proceedings under it.

**19.** Where any distress has been made for levying any moneys by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser on account of any defect or want of form in the summonses, conviction, warrant, distress or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him ; but the person aggrieved by such irregularity may

recover full satisfaction for the special damage, if any, in an action upon the case. C. S. C. c. 104, s. 23.

**20.** The prosecution for every offence punishable upon summary conviction by virtue of this Act, shall be commenced within two months after the commission of the offence. C. S. C. c. 104, s. 17. Limitation of prosecutions under this Act.

**21.** Every penalty or forfeiture for any offence against this Act shall be paid to the Treasurer of the territorial division or other municipal division within which the offence was committed. C. S. C. c. 104, s. 18. Application of penalties.

#### PROTECTION OF PERSONS ACTING UNDER THIS ACT.

**22.** All actions and prosecutions against any person for anything done in pursuance of this Act shall be laid and tried in the County or other proper venue where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise; and notice in writing of such cause of action shall be given to the defendant one month at least before the commencement of the action. C. S. C. c. 104, s. 24. Actions to be tried in the County, and within six months.

**23.** No plaintiff shall recover in any such action if tender of sufficient amends was, by or on behalf of the defendant, made before action brought, or if a sufficient sum of money has been paid into Court since action brought; and though a verdict is given for the plaintiff in any such action, the plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is had certifies his approbation of the action and of the verdict obtained. C. S. C. c. 104, s. 25. No costs unless on certificate of Judge.



### 3. *Expenses of Administration of Justice.*

## CHAPTER 84.

An Act respecting the Fees of Counsel and other Officers in the Administration of Justice.

Fees of Counsel and Attorneys, s. 1.	Fees for other services, s. 5.
Fees of Sheriffs and Coroners, Clerks of the Peace, Constables and Criers, ss. 2, 3.	Penalties for taking unauthorized fees, ss. 6, 7.
Mode of levying, s. 4.	Fees of Gaol Surgeons, s. 8.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

The Superior Courts of Law to frame tariff of fees to be allowed to Counsel, &c., in criminal and Exchequer cases.

1. When not otherwise provided by law, the Courts of Queen's Bench and Common Pleas may from time to time jointly determine and by Rule or Order declare the fees to be allowed to any Counsel, Attorney, or other such officer or person for or in respect of any business done or transacted in either of the said Courts in criminal prosecutions, and in all matters, causes and proceedings which relate to the Queen's Revenue, and in all prosecutions, matters and proceedings under any Commission or Court of Oyer and Terminer and General Gaol Delivery, or under any Special Commission or Court of Oyer and Terminer. C. S. U. C. c. 119, s. 1.

2. The Judges shall, in tables to be by them framed as aforesaid, distinguish the fee to be paid by private individuals. C. S. U. C. c. 119, s. 3.

Fees in criminal matters—to Sheriffs, Coroners, Clerks of the Peace, &c.

2. The table of fees in the Schedule appended to this Act, shall be and constitute the fees to be taken by Sheriffs, Coroners, Clerks of the Peace, Constables and Criers respectively, for the services therein mentioned in respect of any business by them done and transacted in all such prosecutions, matters, causes and proceedings as aforesaid, and in proceedings in the County Judge's Criminal Court and before Coroners or Justices of

the Peace, until otherwise provided by Act of the Legislature, or, in the case of Constables, by the Lieutenant-Governor, under the provisions of the next section. 32 V. c. 11, ss. 2 & 3; 33 V. c. 10, s. 1; 37 V. c. 7, s. 73.

3. The Lieutenant-Governor in Council may from time to time fix the fees to be taken by Constables for services rendered by such officers in the administration of criminal justice or in any proceedings had before Coroners or Justices of the Peace. 37 V. c. 7, s. 73.

Fees to constables.

4. All percentage, fees or allowances, on levying fines and recognizances, may be levied over and above the amount of such fines and recognizances. C. S. U. C. c. 119, s. 3.

Mode of levying fees.

5. Nothing herein contained shall deprive any of the before mentioned officers of such fees as are allowed by any Act of Parliament, or of the Legislature of this Province, for other services not herein provided for. C. S. U. C. c. 119, s. 6.

Fees for services not mentioned herein.

6. If any officer hereinbefore mentioned wilfully and knowingly demands or receives any other or greater fee or allowance than the fee and allowance to which he is entitled under this Act, for any of the services performed by them respectively, (unless allowed by some other Act of Parliament, or of the Legislature of this Province or by the Lieutenant-Governor in Council, under section three of this Act,) he shall, for every such offence, forfeit and pay the sum of forty dollars to any person who sues therefor in any Court having competent jurisdiction to hear and determine the same. C. S. U. C. c. 119, s. 8.

Penalty for any officer taking higher fees for the said services.

7. All such suits and actions must be brought before the end of six months after the offence was committed, and not otherwise. C. S. U. C. c. 119, s. 9.

Limitation of suits for penalties.

8. There may be paid to Gaol Surgeons for the examination of each prisoner eligible for removal, or sentenced to the Central Prison, including certificate, the fee of one dollar. 38 V. c. 24, s. 2.

Fees of Gaol Surgeons.

SCHEDULE.

(Section 2.)

TABLE OF FEES TO BE RECEIVED BY SHERIFFS, CORONERS, CLERKS OF THE PEACE, CONSTABLES AND CRIERS:

SHERIFFS.

1. Attending the Assizes, <i>per diem</i> .....	\$5 00
2. Attending the General Sessions, do.....	4 00

3. Summoning each Grand Jury for the Assizes or General Sessions.....	\$12 00
4. Summoning each Petit Jury for the Assizes or General Sessions.....	24 00
5. For every Prisoner discharged from Gaol, having been committed by warrant for trial at the Assizes or General Sessions.....	1 00
6. Bringing up each Prisoner for arraignment, trial, and sentence—in all, for each prisoner, whether convicted or acquitted .....	2 00
7. Drawing Calendar of Prisoners for trial at the Assizes, including copies....	5 00
8. Advertising the holding the Assizes.....	4 00
9. Advertising the holding the General Sessions.....	2 00
10. Every Annual or General Return, required by law or by the Government, respecting the Gaol or the Prisoners therein.....	5 00
11. Every other Return made to the Government.....	4 00
12. Every Return to the Sessions required by Statute or by order of the Court....	2 00
13. Drawing Calendar of Prisoners for trial at the General Sessions, including copies...	3 00
14. Returning Precepts to the Assizes or Sessions .....	4 00
15. Conveying Prisoners sentenced at Assizes or Sessions, to the Penitentiary or Reformatory or to another County (exclusive of disbursements), for each day necessarily employed.....	6 00
16. Arrest of each individual upon a warrant, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	2 00
17. Serving subpoena upon each person, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ) ...	50
18. Travelling in going to execute warrant or serve subpoena, or in returning with a prisoner ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).... per mile, actually travelled.	10
( <i>Where the service has not been effected, the Board of Audit is to be satisfied that due diligence has been used.</i> )	
19. Conveying Prisoners on Attachment, Judge's Order or Habeas Corpus to another County, exclusive of disbursements, where no charge allowed by law, for each day necessarily employed, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	6 00
20. Making return upon attachment or writ of Habeas Corpus, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	2 00
21. Levying fines or issues on recognizances estreated, or other process ( <i>to be levied under Section four of Rev. Stat. c. 84</i> ).....\$5 per \$100 on the first \$400 of the sum levied, exclusive of mileage at 10 cents. per mile, and on all sums above \$400 the same allowance as on executions in civil proceedings.	
22. Carrying into execution the sentence of the Court in capital cases..... <i>All such sums as are unavoidably disbursed, to be taxed by the Court or Judge who passed the sentence.</i>	
23. Attending and superintending the execution in such cases.....	20 00
24. Summoning each Constable to attend the Assizes or General Sessions (exclusive of mileage at 10 cents a mile) .....	50
25. Keeping a Record of Jurors who have served each Court.....	2 00
26. All disbursements actually and necessarily made in guarding prisoners, or in their conveyance to the Penitentiary or Reformatory, to any other County or else-	

where, or for other purposes in the discharge of the duties of his office (where not provided for by law, nor hereinbefore specifically provided) ; to be rendered in account in detail, with proper vouchers, to the satisfaction of the Board of Audit, and to be by the Board allowed.....

32 V. c. 11 Schedule.

*For services in the County Judge's Criminal Court.*

27. Notification to Judge, and bringing up prisoner, under Judge's warrant, including attendance at Court—in all for each prisoner..... \$1 00
28. Bringing up prisoner for arraignment on trial, and for sentence, including attendances at Court—in all for each prisoner, whether convicted or acquitted..... 2 00
29. For serving subpoenas, arrest under warrant, travel to serve or execute a process, and conveying prisoner to Penitentiary or Reformatory,—*the like sum as is allowed for like services in other cases under this Act.* 33 V. c. 10, s. 1.

*For Services in connection with offenders sentenced, or liable to be removed, or sentenced to the Central Prison.*

30. For making special return of prisoners sentenced to Central Prison, and of such prisoners eligible for removal to Central Prison, as the Inspector may direct (each prisoner)..... 1 00  
(No more than \$5 to be allowed for any one return, and each return must cover all prisoners in gaol when the same is made)
  31. Certified copy of sentence..... 0 50
  32. Taking prisoner to railway station, to be delivered to Central Prison Bailiff, in addition to other necessary expenses incurred in such duty. .... 1 00
- 38 V. c. 24., s. 2.

CORONERS.

1. Precept to summon Jury .. .. . \$ 50
2. Empanelling a Jury..... 1 00
3. Summons for witnesses each .... 25
4. Information or examination of each witness..... 25
5. Taking every recognizance..... 50
6. Necessary travel to take an inquest, per mile..... 20
7. Taking inquisition and making return... .. 4 00
8. Every warrant..... 1 00

*Tariff of Fees established in Michaelmas Term, 1845 ; 32 V. c. 10, s. 3.*

CLERKS OF THE PEACE.

1. For drawing Precept to summon the Grand and Petit Jury, attending Justices to sign same, and transmitting to the Sheriff .... 4 00
2. Attending each General Sessions..... 6 00



3. Making up Record of each General Sessions.....	\$10 00
4. Notice of every appointment of a Constable, under Rev. Stat. c. 82, or other officer appointed by the Justices in Sessions, and notice of any order made by the General Sessions, when required to be notified to any person or party.....	20
5. Subpcena, ( <i>to be paid out of the County funds or by the party applying, as the case may be</i> ) .....	50
6. Bench Warrant.....	1 00
7. Every Recognizance of the Peace for good behaviour.....	1 00
8. Discharging the same.....	50
9. Making up Estreats of each Session. ( <i>See Rev. Stat. c. 88 s. 7</i> ) .....	1 00
10. Every allowance of Certiorari, ( <i>to be paid by the party applying</i> ).....	1 00
11. Furnishing to Sheriff and Coroners revised lists of Constables, whenever ordered to be done by the Justices in General Sessions.....	1 00
12. Reading any Statute or public Proclamation when required to be done by law .....	25
13. Copies of Depositions or Examinations furnished to Prisoners, Defendants, or their Counsel, when required, ( <i>to be paid out of the County funds, or by the party applying, according to the nature of the case,</i> ) per folio of 100 words.....	05
14. Receiving, filing and reading each Presentment of the Grand Jury.....	50
15. For copy thereof forwarded to the Government, or to the County Council, when directed by the General Sessions.....	50
16. Arraigning each Prisoner or Defendant indicted, ( <i>to be paid out of the County funds, or by the party applying, as the case may be</i> ).....	50
17. Empanelling and swearing the Jury in every case, whether criminal or otherwise, where by law a trial by Jury is to be had at the General Sessions, and where no fee is fixed by statute, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	50
18. Swearing each Witness upon any trial by a Jury, or to go before the Grand Jury, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	20
19. Filing each Exhibit on a trial, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	08
20. Every Subpcena Ticket, or copy of Subpcena, when necessary, ( <i>to be paid out of the County funds, or by the party applying, as the case may be</i> )... ..	20
21. Charging the Jury with the Prisoner or Defendant, upon each indictment, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	1 00
22. Receiving and recording each Verdict of a Petit Jury, in any case of trial by Jury, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	50
23. Recording each Judgment or Sentence of the Court upon a Verdict or Confession, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	50
24. Making out and delivering to the Sheriff a Calendar of the Sentences at each Court.....	1 00
25. Certified copy of Sentences sent with the Prisoners to the Penitentiary or Reformatory, after each Session.....	50
26. Making up Record of Conviction or Acquittal, in any case where it may be necessary, ( <i>to be paid out of the County funds, or by the party applying, as the case may be,</i> ) per folio of one hundred words .....	10

27.	Every Copy or Extract of a record or Paper of any kind, required to be made by Law, or by order of the Justices in Sessions, or for the information and use of the Government, when required, and where no charge is fixed by law—if the same is less than 10 folios of one hundred words each, ( <i>to be paid out of the County funds or by the party applying, as the case may be</i> ) .....	\$1 00
28.	If above 10 folios, then for each folio, (            do.            do.            ) .....	10
29.	Discharging any Prisoner by Proclamation.....	50
30.	Drawing Bill of Costs, including taxation and filing the same where necessary to be made and filed, as in cases of assault, nuisances or the like, and in Appeals, ( <i>to be paid by the party</i> ).....	50
31.	Drawing out and taking each Recognizance to appear, either of Prosecutor, Defendant or Witness, ( <i>to be paid out of the County funds or by the party, as the case may be</i> ) ...	50
32.	Calling parties on their Recognizance, and recording their non-appearance, for each person called, ( <i>only to be charged where the parties do not answer, and to be paid out of the County funds or by the party, as the case may be</i> ).....	25
33.	Drawing order of the Sessions or Judge to estreat and put in process, ( <i>on the whole list</i> ) . . . . .	50
34.	Entering any order of Sessions, or of the Judge who presided at the Sessions, to remit any Estreat, and recording an entry of the same, ( <i>to be paid out of the County funds or by the party relieved, as may be ordered</i> ).....	25
35.	Entering and extracting upon a Roll in duplicate, the fines, issues, amerciaments, and forfeited Recognizances, recorded in each Session, making oath to the same, and transmitting to the Sheriff.....	2 00
36.	Making out and delivering to the Sheriff the writ of <i>feri facias</i> and <i>capias</i> thereon.	50
37.	Making out and certifying copy of Roll and return of the Sheriff, and transmitting it to the Provincial Treasurer. ( <i>See Rev. Stat. c. 88, s. 16</i> ) .....	1 00
38.	Making up Book of Orders of Sessions, declaring the limits of the Division Courts, and entering the times and places of holding the Courts.....	1 00
39.	Making out and transmitting a copy thereof to the Government....	1 00
40.	Making out and transmitting copies (with letter) to the Clerk of each Division Court, of the Divisions made by the General Sessions.....	1 00
41.	Drawing Orders of Sessions for altering the limits of Division Courts .....	1 00
42.	Making out and transmitting copies of such Orders to the Government.....	50
43.	Making out and transmitting copies of such Orders to each Division Court affected by the alteration .....	50
44.	For each copy of Schedule of the Division Courts, with the Order of Sessions, for publication .....	50
45.	For every Search under three years, ( <i>to be paid by the party making the search</i> ). ..	20
46.	For the same, extending over three years, (        do        do        do        ). ..	50
47.	For every Certificate required of proof of a Deed, ( <i>to be paid by the party applying on the same</i> ) .....	1 00
48.	For every other Certificate required by Law, or by Order of the Sessions, to be given, where the same is under five folios, ( <i>to be paid out of the County funds, or by the party applying for the same, according to the nature of the case</i> )... ..	50
49.	For the same, if more than five folios, per folio (        do        do        do        ). ..	10

50. Copying Orders of Court, and causing same to be published, where it is requisite, for each Order, exclusive of the expense of publication.....	\$ 50
51. Receiving and filing affidavit of Bastardy, ( <i>see Rev. Stat. c. 131, s. 3</i> ) ( <i>to be paid by the party producing it</i> ) .....	25
52. Receiving and filing each tender for any Public work, or supply, or printing, or other service .....	25
53. Making out a list of the several tenders on each occasion, as they are opened, specifying the names, prices, and other particulars, and filing the same, when required to be done by the Justices.....	50
54. Drawing bonds or agreements for the delivery of articles, or for doing the work for the Gaol or other County purposes, and attending execution, when required by the Justices.....	1 00
55. Receiving and filing accounts and demands, preferred against the County, numbering them, and submitting them for audit, and making out the cheques.....	4 00
56. Making out and delivering lists of orders on the Treasurer, made at each audit. ..	2 00
57. Making out and transmitting to the Provincial Treasurer, a Return or Schedule of all Convictions, ( <i>see Rev. Stat. c. 76, s. 7</i> ), which have taken place before any Justice or Justices, or before the Court, each list.....	1 00
58. Making out the annual account to be laid before the Grand Jury at the General Sessions ( <i>see Rev. Stat. c. 179</i> ), of the sum necessary to be provided for maintenance of insane persons .....	1 00
59. For every report or return required by Statute, or by the Government, where no remuneration has been provided by this Table or by Statute.....	1 00
60. Making out and transmitting a return to the Government of Justices and Coroners who have taken the Oaths, when required to be done, for each return.....	1 00
61. Drawing every special Order of the Court of General Sessions, necessary to be communicated to any party, and entering it on Record.....	50
62. Letter, and transmitting or delivering to the party interested or affected thereby.	25
63. Swearing each party to an Affidavit, where no charge is elsewhere provided for it, ( <i>to be paid out of the County funds, or by the party for whom the Affidavit is sworn, according to the nature of the case</i> ).....	20
64. Causing notice to be published of any special or adjourned Sessions, when directed by the Chairman of the General Sessions, or other two Justices, so to do ; exclusive of the amount paid the printer for publication.....	1 00
65. Sending notice of any such Session to the Justices individually, when it is directed by the Chairman, or other two Justices—for each notice .....	10
66. Attending each adjourned or special Sessions, and making up record thereof .....	2 50
67. Receiving and filing Notices of Appeal, and the Appeal from any judgment or conviction by one or more Justices, where an Appeal to the General Sessions is given by Law, ( <i>to be paid out of the County funds, or by the party appealing, as the case may be</i> ) .....	25
68. When the appeal called on, reading the Conviction, Notice of Appeal, and Recognition, ( <i>to be paid out of the County funds, or by the party appealing, as the case may be</i> ) .....	50
69. For all other Services upon the Trial of such Appeal case, when tried by a jury, including the receiving and recording the Verdict ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ),.....the same charges as in ordinary criminal trials.	

70. Issuing Process to enforce the order of the Court in an Appeal case, ( <i>to be paid out of the County funds, or by the party, as the case may be</i> ).....	\$1 00
71. Making out Warrant of Distress or Commitment, in any case where no fee is specially assigned therefor in any Statute, or in this Table.....	1 00
72. Drawing certificate of approval by the Justices in Sessions, of sureties tendered by the Sheriff, ( <i>to be paid by the Sheriff</i> ) .....	50
73. Administering Oaths to any Public Officer, when authorized so to do, ( <i>to be paid by the officer</i> ) .....	25
74. Receiving and filing each Oath of Qualification of a Justice of the Peace .....	25
75. For every Letter written to the Government, every Letter written by direction of the Chairman, or of the Justices in Sessions, or Board of Audit, to Justices, Coroners, or Constables, or others, upon special business connected with the Administration of Justice, or County purposes ...	25
76. For distributing the Statutes to the Justices and County Officers, or others, when directed by Statute or the Government so to do, and taking receipts therefor from each Justice or Officer .....	10
77. For accounting to the County Member for the copies of Statutes not called for by the Justices and County Officers, and delivering the same to him, wherever such duty is required by Statute, or by the Government and no other fee allowed...	1 00
78. For procuring and supplying to Clergymen and Ministers all Books and Forms required under Rev. Stat. c. 124, s. 17, for each Book with the necessary set of Forms .....	25
79. For receiving and filing Voters' Lists under Rev. Stat. c. 9, ss. 11 & 12, each list.....	25
80. For filing each List, Return, or other paper, where no charge is specially provided for, except accounts and claims against the County, and papers connected with matters to be charged against private individuals, ( <i>to be paid out of the County funds, or by the party for whom the service is rendered, according to the nature of the case</i> ) .....	08

---

*For services in County Judge's Criminal Court.*

81. Attending and service in Court, and making all necessary entries for each prisoner brought before the Judge, and not consenting to be tried—in all.....	50
82. For attendance in Court, and services rendered at trial, making necessary record of proceedings and all necessary entries, including calendar of conviction for each prisoner .....	2 00
83. Preparing Judge's warrant to bring up the body of prisoner, and delivering the same to Sheriff—for each prisoner....	50
84. Issuing Writ of Summons to witness when necessary .....	40
85. Copy of Summons, each .....	20
86. Warrant of remand, when issued and delivered to Sheriff .....	50
87. For warrant to arrest, taking and estreating recognizances and proceedings to enforce same,..... <i>the same fees as allowed for like services at the General Sessions of the Peace</i>	

32 V. c. 11, s. 2; 33 V. c. 10, *Sched.*; *Reg. Gen. Trin. Term*, 1862.



## CONSTABLES.

1. Arrest of each individual upon a warrant, (to be paid out of the County funds, or by the party, as the case may be) .....	\$1 50
2. Serving summons or subpoena, (to be paid out of the County funds, or by the party, as the case may be).....	25
3. Mileage to serve summons, subpoena or warrant, (to be paid out of the County funds, or by the party, as the case may be).....	10
4. Do. when service cannot be effected, upon proof of due diligence, (do. do.)	10
5. Do. taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance .....	10
6. Attending Justices on summary trials, or on examination of prisoners charged with crime, for each day necessarily employed in one or more cases, when not engaged more than four hours .....	1 00
7. Do. when engaged more than four hours .....	1 50
8. Attending Assizes or Sessions each day.....	1 50
9. Mileage travelling to attend Assizes, Sessions, or before Justices, (when public conveyance can be taken, only reasonable disbursements to be allowed).....	10
10. Summoning Jury for Coroner's inquest, including attending at inquest, and all services in respect thereof, if held on same day as Jury summoned.....	2 00
11. Attending each adjournment thereof, if not engaged more than four hours.....	1 00
12. Do. if engaged more than four hours .....	1 50
13. Serving summons or subpoena to attend before Coroner, (subject to No. 10).....	25
14. Mileage serving same. ....	10
15. Exhuming body under Coroner's warrant.....	2 00
16. Reburying same.....	2 00
17. Serving distress warrant, and returning same... ..	1 50
18. Advertising under distress warrant .....	1 00
19. Travelling to make distress, or to search for goods to make distress, when no goods are found.....	10
20. Appraisements, whether by one Appraiser or more, ..... two cents in the dollar on the value of the goods.....	
21. Catalogue sale and commission, and delivery of goods.. ..... five cents in the dollar on the net produce of the goods.....	
22. Executing search warrant .....	1 50
23. Serving notices on constables, when personally served.....	50

37 V. c. 7, s. 73 ; Order in Council 24 July, 1874.

## CRIERS.

1. Making proclamation for opening or adjourning the Court of Assize and Nisi Prius, Oyer and Terminer, and General Gaol Delivery and General Sessions..... \$0 20



In cases of felony, clerks to be paid fees from the County funds.

**3.** In case any person is charged with felony, every officer of the Court before which such person is tried, or any proceeding had with regard to such charge, and who renders any official services in the matter of such charge, or in the course of such trial, to the person so charged with felony, shall be paid his lawful fees for all such services out of the County funds, in the same manner as other fees due and payable to them in respect of official services by them rendered to the Crown in the conduct of public prosecutions, are paid at the time this Act takes effect, and no such fees shall in any case be demanded of or be payable by the person charged with such felony. C. S. C. c. 99, s. 87.

By whom costs in prosecution for misdemeanors to be paid.

**4.** In case any person is convicted before any Court of General Sessions of any assault and battery, or other misdemeanor, such person shall pay such costs as may be allowed and taxed by the Court; but in case any defendant is acquitted, the costs of the prosecution, when not otherwise provided by law, shall be paid out of the County funds. C. S. U. C. c. 119, s. 4.

Accounts against County to be audited by a Board of Audit.

**5.** All accounts and demands preferred against the County, the approving and auditing whereof before the nineteenth day of December, 1868, belonged to the Quarter Sessions, shall be audited and approved by the Board of Audit hereinafter mentioned, of the County. 32 V. c. 6, s. 9 (2); 33 V. c. 8, s. 1.

Accounts to be sent to Clerk of Peace quarterly.

**6.** Such accounts and demands shall be delivered to the Clerk of the Peace of the County on or before the first days of the months of January, April, July and October, in every year. 32 V. c. 6, s. 9 (3); 34 V. c. 29, s. 1.

How and when audited.

**7.** Such of the said accounts and demands as have been so delivered, shall be audited by a Board of Audit, composed of the Judge or Junior or acting Judge of the County Court, and two other persons, who shall be appointed annually for that purpose by the County Council of such County or Union of Counties at their first meeting in each year, not more than one of such persons being a member for the time being of such County Council; and such accounts and demands shall be taken into consideration by the said Board of Audit between the first and fifteenth days of the said months of January, April, July and October, in each and every year, and disposed of as soon as practicable. 33 V. c. 8, s. 2; 34 V. c. 29, s. 2. See 36 V. c. 48, ss. 393, 394; and *Rev. Stat. Ont.* c. 174, ss. 474 & 475.

Duties of Clerk of the Peace at audit.

**8.** It shall be the duty of the Clerk of the Peace to convene the Board of Audit on the direction of the Judge of the County Court, for the purpose of submitting to such Board the accounts lodged with him, to attend such audit, record the proceedings thereat and carry out the orders of the Board in respect of the

same, as formerly done by him at and after Session audits. 40 V. c. 8, s. 43.

9. All orders or cheques of the Board of Audit, except for the payment of Constables or services rendered during the sitting of the Court of General Session, shall express the Act, if any, under which the expenditure is authorized. C. S. U. C. c. 121, s. 3, *last part*. Orders or cheques given to express Act authorizing payment.

10. The Treasurer of the County shall furnish the Board of Audit with a copy of the items disallowed by the Provincial Treasurer in the criminal justice accounts of the previous quarter, and the Board shall have power, in their discretion, to deduct the amounts so disallowed from the next, or any accounts of the same officers submitted for audit. 40 V. c. 8, s. 45 (1). Items disallowed by Prov. Treas. may be deducted from next accounts.

11. The said Board shall also have power to direct the Treasurer to defer payment of any accounts, or any items in any of the said accounts, connected with criminal justice, payable out of the Consolidated Revenue Fund of the Province, of which they may have doubt either as to the liability of the Province or the correctness of the amount charged, until the decision of the Provincial Treasurer as to the correctness or allowance of the said items, has been notified to the County Treasurer. 40 V. c. 8, s. 45 (2). Doubtful items in accounts.

12. The Treasurer of every County shall, without further authority, pay the amount of the fees which are payable out of County funds, when duly allowed by the Board of Audit, in the following order, and in preference to all other charges unless otherwise provided by law—that is to say, after the expenses of levying and collecting and managing the rates and taxes imposed in the County are paid: County Treasurer's duty.

*Firstly*, all sums of money payable to the Sheriff, Coroner, Gaoler, Surgeon of the County Gaol, or to any other officer or person, for the support, care or safe keeping of the prisoners in the County Gaol, or for the repairing and maintaining of the Court House or Gaol: Order of payment of accounts.

*Secondly*, the accounts of Public Officers and Officers of the Court of General Sessions:

*Thirdly*, all sums of money payable for any other purpose whatever connected with the Administration of Justice within the County:

*Fourthly* all other sums of money allowed by the Board of Audit in the order in which the same were allowed. C. S. U. C. c. 119, s. 7; C. S. U. C. c. 121, s. 4.



## CHAPTER 86.

## An Act respecting the Expenses of the Administration of Justice in Criminal Matters.

---

Certain fees and expenses in the Administration of Criminal Justice payable out of the Con. Rev. Fund, s. 1.  
Auditing of Administration of Justice accounts, s. 2.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

How expenses of criminal justice payable.

**1.** Such of the expenses of the Administration of Criminal Justice in this Province as are mentioned in the Schedule to this Act shall be paid out of the Consolidated Revenue Fund of the Province. C. S. U. C. c. 120, ss. 1 & 3; *see also* 32 V. c. 10; 33 V. c. 11.

Accounts to be audited in such manner as the Lieut.-Governor in Council appoints.

**2.** All accounts of or relative to the said expenses shall be examined, audited, vouched, and approved under such regulations as the Lieutenant-Governor in Council, from time to time, directs and appoints. C. S. U. C. c. 120, s. 2.

---

## SCHEDULE.

## SHERIFF.

1. Attending the Assizes—(*See Tariff Rev. Stat. c. 84, Schedule, item 1*).
2. Attending the General Sessions—(*Tariff, item 2*).
3. Summoning each Grand Jury for the Assizes or General Sessions—(*Tariff, item 3*).
4. Summoning each Petit Jury for the Assizes or General Sessions—(*Tariff, item 4*).
5. For every Prisoner discharged from Gaol, having been committed by Warrant for trial at the Assizes or General Sessions—(*Tariff, item 5*).
6. Bringing up each Prisoner for arraignment, trial and sentence, whether convicted or acquitted—(*Tariff, item 6*).

7. Drawing Calendar of Prisoners for trial at the Assizes, including copies—(*Tariff, item 7*).

8. Drawing Calendar of Prisoners for trial at the General Sessions, including copies—(*Tariff, item 13*.)

9. Advertising the holding of the Assizes or General Sessions—(*Tariff, items 8 & 9*).

10. Every Annual or General Return, required by law, or by the Government, respecting the Gaol or the Prisoners therein—(*Tariff, item 10*).

11. Every other Return made to the Government or to the Sessions, required by statute or by order of the Court—(*Tariff, items 11 & 12*).

12. Returning Precept to the Assizes or General Sessions—(*Tariff, item 14*).

13. Conveying Prisoners to the Penitentiary or Reformatory, or to another County, and disbursements—(*Tariff, item 15*).

14. Arrest of each individual upon a Warrant, (*if payable by the Crown*)—(*Tariff, item 16*).

15. Serving Subpoena upon each person, (*if payable by the Crown*)—(*Tariff, item 17*).

16. Travelling in going to execute Warrant or serve Subpoena, and in returning with Prisoner, (*if payable by the Crown*)—(*Tariff, item 18*).

17. Conveying Prisoners on Attachment, Judge's order or *Habeas Corpus*, to another County, and disbursements, (*if payable by the Crown*)—(*Tariff, item 19*).

18. Making return upon Attachment or Writ of *Habeas Corpus*, (*if payable by the Crown*)—(*Tariff, item 20*).

19. Levying Fines or Issues on Recognizances estreated, and mileage—(*Tariff, item 21*).

20. Disbursements in carrying into execution the sentence of the Court in capital cases—(*Tariff, item 22*).

21. Attending and superintending the Execution in such cases—(*Tariff, item 23*).

22. Summoning each Constable to attend the Assizes or General Sessions—(*Tariff, item 24*).

23. Keeping a Record of Jurors who have served at each Court—(*Tariff, item 25*).

24. All disbursements actually and necessarily made in guarding Prisoners, or in their conveyance to the Penitentiary or Reformatory, or to any other County or District or elsewhere, or for other purposes in the discharge of the duties of his office (when not otherwise provided for), to be allowed by the Board of Audit—(*Tariff, item 26*).

*For services in the County Judge's Criminal Court.*

25. Notification to Judge and bringing up prisoner under Judge's warrant, including attendance in Court—(*Tariff, item 27*).

26. Bringing up prisoner for arraignment on trial and for sentence including attendances at Court—(*Tariff, item 28*).

27. Serving subpoenas, arrest under warrant, travel to serve or execute process, and conveying prisoners to Penitentiary or Reformatory, (*where payable by the Crown*)—(*Tariff, item 29*).

33 V. c. 10.

*For services in connection with offenders sentenced, or liable to be removed or sentenced to the Central Prison.*

28. Making special return of prisoners sentenced to Central Prison, and of such prisoners eligible for removal to Central Prison, as the Inspector may direct—(*Tariff, item 30*).

29. Certified copy of sentence—(*Tariff, item 31*).

30. Taking prisoner to railway station, to be delivered to Central Prison Bailiff, in addition to other necessary expenses incurred in such duty—(*Tariff, item 32*).

38 V. c. 24.

## CORONER.

1. Precept to summon Jury—(*Tariff, item 1*).

2. Empanelling a Jury—(*Tariff, item 2*).

3. Summons for Witness—(*Tariff, item 3*).

4. Information or Examination of each Witness—(*Tariff, item 4*).

5. Taking every Recognizance—(*Tariff, item 5*).

6. Necessary travel to take an Inquest—(*Tariff, item 6*).

7. Taking Inquisition and making Return—(*Tariff, item 7*).

8. Every Warrant—(*Tariff, item 8*).

## CLERK OF THE PEACE.

1. Drawing precept to summon the Grand and Petit Jury, attending Justices to sign same and transmitting to the Sheriff—(*See Tariff in the Schedule to Rev. Stat., c. 84, item 1*).

2. Attending each General Sessions—(*Tariff, item 2*).
3. Making up Record of each General Sessions—(*Tariff, item 3*).
4. Notice of every appointment of a Constable under Rev. Stat., c. 82, ss. 1 & 4, or other officer appointed by the Justices in Session, and notice of any order made by the General Sessions when required to be notified to any person or party—(*Tariff, item 4*).
5. Issuing Subpœna, (*if payable by the Crown*)—(*Tariff, item 5*).
6. Issuing Bench warrant—(*Tariff, item 6*).
7. Every Recognizance of the Peace for good behaviour—(*Tariff, item 7*).
8. Furnishing to Sheriff and Coroners revised lists of constables, whenever ordered to be done by the Justices in General Sessions—(*Tariff item 11*).
9. Copies of Depositions or Examinations furnished to Prisoners, Defendants, or their Counsel, when required by the party or his Counsel, (*if payable by the Crown*)—(*Tariff, item 13*).
10. Receiving and filing each Presentment of the Grand Jury—(*Tariff, item 14*).
11. Arraigning each Prisoner or Defendant indicted, and recording Plea, (*if payable by the Crown*)—(*Tariff, item 16*).
12. Empanelling and swearing the Jury in every case, whether criminal or otherwise, where by law a trial by Jury is to be had at the General Sessions, and when no fee is fixed by statute, (*if payable by the Crown*)—(*Tariff, item 17*).
13. Swearing each Witness upon any trial by a Jury, or to go before the Grand Jury, (*if payable by the Crown*)—(*Tariff, item 18*).
14. Filing each Exhibit upon a trial, (*if payable by the Crown*)—(*Tariff, item 19*).
15. Charging the Jury with the Prisoner or Defendant, upon each indictment, (*if payable by the Crown*)—(*Tariff, item 21*).
16. Receiving and Recording each verdict of a Petit Jury, in any case of trial by Jury, (*if payable by the Crown*)—(*Tariff, item 22*).
17. Recording each Judgment or Sentence of the Court, upon a verdict or confession, (*if payable by the Crown*)—(*Tariff, item 23*).
18. Making out and delivering to the Sheriff a Calendar of the Sentences at each Court—(*Tariff, item 24*).
19. Certified Copy of Sentences sent with the Prisoners to the Penitentiary, or Reformatory after each Session—(*Tariff, item 25*).
20. Making up Record of Conviction or Acquittal, in any case where necessary, (*if payable by the Crown*)—(*Tariff, item 26*).
21. Discharging any Prisoner by proclamation—(*Tariff, item 29*).



22. Drawing out and taking each Recognizance to appear, either of Prosecutor, Defendant or Witness, (*if payable by the Crown*)—(*Tariff, item 31*).

23. Calling parties on their Recognizance and recording their non-appearance, (*if payable by the Crown*)—(*Tariff, item 32*).

24. Making out lists of forfeited Recognizances and Fines to submit to the presiding Judge after each Session in order that they may be estreated.—(*Tariff, item 9*).

25. Entering any Order of Sessions or of the County Judge to remit an estreat and recording an entry of the same, (*if payable by the Crown*)—(*Tariff, item 34*).

26. Drawing Order of the Judge to estreat and put in process—(*Tariff, item 33*).

27. Entering and extracting upon a roll, in duplicate, the Fines, Issues, Amerciaments and forfeited Recognizances, recorded in each Session, making oath to the same, and transmitting it to the Sheriff—(*Tariff, item 35*).

28. Making out and delivering to the Sheriff the Writ of *feri facias* and *capias* thereon—(*Tariff, item 36*).

29. Making out and certifying copy of Roll and Return of Sheriff, and transmitting it to Provincial Treasurer—(*Tariff, item 37*).

30. Making up Books of Orders of Sessions, declaring the limits of the Division Courts, and entering the times and places of holding the Courts—(*Tariff, item 38*).

31. Making out and transmitting a copy thereof to the Government—(*Tariff, item 39*).

32. Making out and transmitting copies (with letter) to the Clerk of each Division Court, of the Divisions made by the General Sessions—(*Tariff, item 40*).

33. Drawing Orders of Session for altering the limits of Division Courts—(*Tariff, item 41*).

34. Making out and transmitting copies of such Orders to the Government—(*Tariff, item 42*).

35. Making out and transmitting copies of such Orders to each Division Court affected by the alteration—(*Tariff, item 43*).

36. For each Copy of Schedule of Division Courts, with the Order of Sessions for publication—(*Tariff, item 44*).

37. Swearing each party to an Affidavit, when no charge is elsewhere provided for it, (*if payable by the Crown*)—(*Tariff, item 63*).

*And for services in County Judges Criminal Court.*

38. Attending and service in Court, and making all necessary entries for each prisoner brought before the Judge, and not consenting to be tried—(*Tariff, item 81*).

39. For attendance in Court, and services rendered at trial, making necessary record of proceedings and all necessary entries, including calendar of conviction for each prisoner—(*Tariff, item 82*).

40. Preparing Judge's warrant to bring up the body of prisoner, and delivering the same to Sheriff—(*Tariff, item 83*).

41. Issuing Writ of Summons to witness.—(*Tariff, item 84*).

42. Copy of Summons—(*Tariff, item 85*).

43. Warrant of remand, when issued and delivered to Sheriff—(*Tariff, item 86*).

44. For warrant to arrest, taking and estreating recognizances and proceedings to enforce same—(*Tariff, item 87*).

33 V. c. 10.

---

CONSTABLE.

1. Arrest of each individual upon a Warrant, (*if payable by the Crown*)—(*Tariff, item 1*).

2. Serving Summons or Subpoena, (*if payable by the Crown*)—(*Tariff, item 2*).

3. Mileage, (*if payable by the Crown*)—(*Tariff, item 3*).

4. Mileage in going to serve Summons or Warrant when the service has not been effected; the Board of Audit being satisfied that due diligence was used, (*if payable by the Crown*)—(*Tariff, item 4*).

5. Attending Assizes or Sessions—(*Tariff, item 8*).

6. Attending any Justice on summary trials or on the examination of Prisoners charged with any crime—(*Tariff, items 6 & 7*).

7. Taking Prisoners to Gaol, and disbursements necessarily expended in their conveyance—(*Tariff, item 5*).

8. Summoning Jury for Inquest and services at same—(*Tariff, item 10*).

9. Attending Inquest for each day other than the first—(*Tariff, items 11 & 12*).

10. Serving Summons or Subpoena to attend before Coroner—(*Tariff, item 13*).

11. Mileage serving same—(*Tariff, item 14*).

12. Serving notice of appointment of Constables, when personally served—(*Tariff, item 23*).

C. S. U. C. c. 120, *Sched.*

---

CRIER.

1. Making Proclamation for opening or adjourning the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, and General Sessions—(*Tariff, item 1*).

2. Making every other Proclamation—(*Tariff, item 2*).

3. Calling and Swearing Grand Jury—(*Tariff, item 3*).

4. Calling and Swearing every Petit Jury—(*Tariff, item 4*).

5. Calling and Swearing every Witness or Constable—(*Tariff, item 5*).

6. Attending Assizes and General Sessions—(*Tariff, item 6*).

C. S. U. C. c. 120, *Sched.*

---

OTHER MATTERS.

1. The maintenance of Prisoners confined upon criminal charges—

2. A proportion of the Salary of the Gaoler of each County Gaol, and of the payment of Turnkeys—

3. Medicines, Fuel and other similar necessities for the Gaol, and the Prisoners confined on criminal charges—

4. Disbursements in transporting Prisoners to the Penitentiary, or Reformatory and for carrying other sentences of the Courts into effect—

5. Fee to Gaol Surgeon for the examination of each prisoner eligible for removal or sentenced to Central Prison. (38 V. c. 24, s. 2.)

6. Together with all other charges relating to Criminal Justice payable to the foregoing Officers specially authorized by any Act of the Legislature, and immediately before the ninth of June, one thousand eight hundred and forty-six, payable out of County funds.

C. S. U. C. c. 120, *Sched.*

---

## CHAPTER 87.

## An Act to provide for the Payment of Witnesses for the Crown.

---

Interpretation, s. 1.	Reimbursement by Government in part, s. 10.
Witnesses in cases above degree of misdemeanor, s. 2.	Witnesses from unorganized tracts, ss. 11, 12.
Cases in which Judge may order Crown witnesses to be paid, ss. 3-4.	Witness fees where recovered from parties, s. 13.
Certificate of Crown Counsel to obtain order, s. 5.	Fee to County Attorney for certificate, ss. 14, 15.
Form of order, &c., ss. 6, 7.	Miscellaneous 16-18.
Payment by municipalities, ss. 8, 9.	

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

**1.** In the sections of this Act numbered from three to seven inclusive,

Signification of the word "Court" in this Act.

"Court," shall include the Superior Courts of Common Law, Courts of Oyer and Terminer, General Gaol Delivery, General Sessions of the Peace, and County Judges' Criminal Courts. 39 V. c. 13, s. 1.

**2.** Except as provided in this Act or other Act in that behalf, no witness in any cases above the degree of misdemeanor shall be allowed anything for his attendance or travel. C. S. U. C. c. 119, s. 15, *last part*.

No fees to witnesses in case above misdemeanor except, &c.

**3.** In case of a prosecution or trial for treason or felony, or any offence which is punishable by imprisonment only, or any offence for which whipping may be imposed, the Judge who holds the Court before which the prosecution or trial for the offence takes place, may grant, to any one who attends on recognizance or subpoena, or on the request of the Crown Counsel, to give evidence, or who gives evidence, on the part of the Crown, an order for payment of such sum of money as to the Judge seems reasonable and sufficient to compensate such witness for his costs and charges in attending as such witness; but such sum shall not exceed the amount then payable to the like witnesses in civil cases in the Superior Courts; and no allowance shall be made to any witness who resides in the County Town where the offence is tried, or within one mile thereof, except in the case of medical or indigent witnesses. 39 V. c. 13, s. 2; 40 V. c. 7, *Sched. A* (113).

In certain cases Crown witnesses may be compensated for attendance on prosecution or trial,



or where no indictment preferred or trial had.

4. Where no bill of indictment has been preferred, or where the trial has not been proceeded with, the Court may make a similar order in favour of any person who, in the opinion of the Court, *bona fide* attended the Court in obedience to a recognizance or subpoena. 39 V. c. 13, s. 3.

Certificate whereon order to be made.

5. The order is not to be made except on a certificate by the Counsel, if any, for the Crown in the case, and by the County Crown Attorney (unless the County Crown Attorney is also the Counsel for the Crown, and certifies as such); and such certificate shall contain the particulars necessary in, and be to the effect of, the affidavit required in civil cases to entitle a party to disbursements to witnesses; but the Court may require further evidence, and shall have a discretion to grant or refuse the order. 39 V. c. 13, s. 4.

Discretion as to order.

Certificate in absence of Crown Attorney.

2. If the County Crown Attorney is absent, and for this or for some other reason some other person is acting for him, the certificate of the latter may be given instead of the certificate of the County Crown Attorney. 39 V. c. 13, s. 5.

Order may include several cases and witnesses.

6. The order may embrace any number of witnesses and any number of cases, or may be for one witness only. 39 V. c. 13, s. 5.

Order, how made out and directed.

7. Every order for payment shall be forthwith made out and delivered by the proper officer of the Court, and shall be directed to the Treasurer of the County in which the offence was committed, or was supposed to have been committed; or if such offence was committed or was supposed to have been committed in a City, or in a Town separated for municipal purposes from the County, the order shall be directed to the Treasurer of the said City or Town. 39 V. c. 13, s. 6.

Payment by a Treasurer on whom order made.

8. The Treasurer to whom the order is directed shall forthwith, out of the funds of the Municipality in his hands, pay to the witness, or each of the witnesses named, the amount ascertained by the certificate, on such witness signing a receipt therefor in person. 39 V. c. 13, s. 7.

Payment by a Treasurer on whom order is not made.

9. In case the trial takes place in a County other than the County in which the offence was committed, the Treasurer of the County in which the trial takes place, if applied to by the witnesses, shall forthwith pay the money in the first instance out of the funds of the Municipality in his hands, and shall forthwith be reimbursed by the Treasurer to whom the order is directed. 39 V. c. 13, s. 8.

One-third to be paid to municipality.

10. One-third of the amount paid to witnesses under this Act shall be repaid to the Municipality out of the Consolidated Revenue Fund of the Province, except as is hereinafter mentioned. 39 V. c. 13, s. 9.

**11.** In respect of witnesses under the third and fourth sections of this Act, in cases sent from the unorganized Districts for trial in any County, the expenses of such witnesses shall be repaid in full out of the Consolidated Revenue Fund. 39 V. c. 13, s. 10.

Expenses of witnesses sent from unorganized districts, how repaid.

**12.** The like fees shall be paid out of the Consolidated Revenue Fund to witnesses attending sittings of any of the Courts mentioned in the first section of this Act, held within any of the said unorganized Districts, upon the prosecution or trial of any treason, felony or other offence mentioned in the third and fourth sections of this Act, and shall be so paid under such regulations as the Lieutenant-Governor in Council may adopt. 39 V. c. 13, s. 11.

Witnesses in unorganized districts.

**13.** In case any witness fees paid under the provisions of this Act are, by virtue of the judgment of the Court, afterwards recovered from the prosecutor or defendant, the same shall be repaid to the Municipality, and one-third accounted for by the Municipality to the Crown. 39 V. c. 13, s. 12.

On recovery from prosecutor or defendant, the Municipality to be repaid.

**14.** For and to cover the costs, charges and expenses of, and incidental to, the certificate, or the inquiry whether a certificate should be granted, the County Crown Attorney shall be entitled to receive from the Corporation of the County in which the Court is held the sum of one dollar, in respect of every prosecution or trial on which a witness is examined, which sum shall be over and above his other costs and charges. 39 V. c. 13, s. 13.

Fee to Crown Attorney in respect of certificate.

**15.** One-third of the fee of one dollar, payable to the County Crown Attorney, as aforesaid, shall be repaid to the Municipality out of the Consolidated Revenue Fund of the Province. 39 V. c. 13, s. 14.

One-third of Crown Attorney's fee to be repaid to Municipality.

**16.** In case of any information, action, suit or other legal proceeding before any Court in Ontario, by or on behalf of the Crown, for the prosecution of rights, claims or demands of Her Majesty against any person or body corporate, for the use of the Province, or for the recovery of the possession of any lands, deeds or personal property whereto Her Majesty claims to be entitled, for the use of the Province, the witnesses shall be entitled to be paid the like witness fees as are payable in such Court in civil suits, between subject and subject. 39 V. c. 13, s. 15.

Witness fees payable on prosecution of claims, &c., by Her Majesty.

**17.** Nothing herein contained shall be construed to entitle a witness in any case to which this Act applies to require payment of any sum of money previous to the determination at such Court of the prosecution or trial at which he attends as a witness. 39 V. c. 13, s. 16.

Compensation not to be paid before determination of the case.

**18.** This Act shall not prejudice the rights which any County in which Indian reservations are located may have as

Rights of Counties concerned under

39 Vict., c. 18, s. 71, (D) as against the Dominion of Canada, under section seventy-one of the Act passed by the Parliament of Canada in the Session held in the thirty-ninth year of the reign of Her Majesty Queen Victoria, and chaptered eighteen. 39 V. c. 13, s. 17.

## CHAPTER 88.

### An Act respecting Estreats.

Fines at Assizes :	Forbearance of estreat, s. 9.
Entry of fines on roll after Assizes,	“ levy, s. 10.
ss. 1, 2.	Sale of land for payment of fines, ss.
Writ to Sheriff to levy, s. 3.	11, 12.
Fines at Sessions :	Condition of release of goods seized,
Entry on roll, ss. 4, 5.	s. 13.
Writ to Sheriff for levy, s. 6.	Discharge of forfeited recognizances,
Estreat of recognizances to prose-	s. 14.
cute, ss. 7, 8.	Returns by Sheriff and Clerk of
	Peace, ss. 15-17.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

All fines, &c., shall within 21 days from adjournment of Court be entered on a roll by Clerk of Assize.

1. Unless otherwise provided, all fines, issues, amerciaments and forfeited recognizances, the disposal of which is within the power of the Province, set, imposed, lost or forfeited, by or before any Court of Oyer and Terminer, or General Gaol Delivery, or before any Court of Assize and Nisi Prius, shall, within twenty-one days from the adjournment of such Court, be fairly entered and extracted on a roll, by the Clerk of Assize, or in case of his death or absence, by any other person under the direction of the Judge who presided at such Court; which roll shall be made in duplicate, and be signed by the Clerk of Assize, or, in case of his death or absence, by such Judge. C. S. U. C. c. 117, s. 1.

One copy of roll to be sent to Clerk of the Crown and the other to the Sheriff of the County.

2. One of the said rolls shall be transmitted to the office of the Clerk of the Crown and Pleas of the Court of Queen's Bench on or before the first day of the Term next succeeding the Court by or before which such fines and forfeitures were imposed or forfeited, and the other of such rolls shall, so soon as the same is prepared, be sent by the Clerk of Assize, or, in case of his death or absence, shall be sent by such Judge as

aforsaid, with a writ of *feri facias* and *capias*, according to the form in the Schedule to this Act, to the Sheriff of the County in and for which such Court was holden. C. S. U. C. c. 117, s. 2, *first part*.

3. Such writ shall be authority to the Sheriff for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made; and every person so taken shall be lodged in the Common Gaol of the County until satisfaction is made, or until the Court of Queen's Bench or Common Pleas, upon cause shown by the party as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with. C. S. U. C. c. 117, s. 2, *last part*.

Mode of proceeding to levy fine, &c.

4. All fines, issues, amerciaments and forfeited recognizances, the disposal of which is within the power of the Province, and which are not otherwise provided for, set, imposed, lost or forfeited, by or before any Court of General Sessions of the Peace, shall, within twenty-one days after the adjournment of such Court, be fairly entered and extracted on a roll by the Clerk of the Peace, which roll shall be made out in duplicate, and shall be signed by the Clerk of the Peace. C. S. U. C. c. 117, s. 3.

Fines, &c., incurred at General Sessions to be entered and extracted on a roll in duplicate.

5. One of the said rolls shall remain deposited in the office of the Clerk of the Peace, and the other of such rolls shall, so soon as the same is prepared, be sent by the Clerk of the Peace, with a writ of *feri facias* and *capias*, according to the form in the Schedule to this Act, to the Sheriff of the County in which such Court of General Sessions was held. C. S. U. C. c. 117, s. 4.

How rolls disposed of and execution issued.

6. Such writ shall be authority to the Sheriff for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made; and every person so taken shall be lodged in the Common Gaol of the County until satisfaction is made, or until the Court of General Sessions of such County, upon cause shown by the party as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with. C. S. U. C. c. 117, s. 5.

Duty of Sheriff under the execution.

7. In case any person bound by recognizance for his appearance, (or for whose appearance any other person has become so bound) to prosecute or give evidence in any case of misdemeanor, for the commission of which a fine or penalty is imposed, which

Estreat of recognizance, &c.



the Province is entitled to receive, makes default, the officer of the Court by whom the estreats are made out, shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person, or his surety was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall in such list distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether by reason of the non-appearance of such person, the ends of justice have been defeated or delayed. C. S. C. c. 99, s. 120,

Recognizances, &c., not to be estreated without judge's order.

8. Every such officer shall, before any such recognizance is estreated, lay such list, if at a Court of Oyer and Terminer or Goal Delivery or General Sessions of the Peace in any District or County, before the Judge, or, if at any of Her Majesty's Superior Courts of Record in this Province, before one of the Judges who presided at such Court, who are respectively required to examine such list, and to make such order touching the estreating or putting in process any such recognizance as appears just; and no officer of any such Court shall estreat or put in process any such recognizance without the written order of the Judge, before whom such list has been laid. C. S. C. c. 99, s. 121.

Court may forbear estreating recognizances under certain circumstances.

9. Except in the cases of persons bound by recognizance for their appearance (or for whose appearance any other person has become bound) to prosecute or give evidence, in every case of default whereby a recognizance has become forfeited, if the cause of absence is made known to the Court in which the party was bound to appear, the Court, on consideration of such cause, and considering also whether by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated; and with respect to all recognizances estreated and all fines imposed by any Court for the non-attendance of any juror or constable, or of any public officer bound to attend at such Court, if it appears to the satisfaction of the Judge who presided at such Court, that the absence of the person for whose appearance any recognizance was entered into, or that the absence of any person fined for non-attendance, was owing to circumstances which rendered such absence justifiable, such Judge may make an order directing that the sum forfeited upon such estreated recognizance, or the fine imposed in any such case as aforesaid, shall not be levied. C. S. U. C. c. 117, s. 6.

Presiding Judge may direct Sheriff to forbear levying fines, &c., under certain circumstances.

10. And for such purpose, the Clerk of Assize, or Clerk of the Peace, before sending to the Sheriff any roll, with a writ of *per vi facias* and *capias*, as directed by this Act, shall submit the same to the Judge who presided at the Assizes, or at the Court of General Sessions for his revision; and such Judge, may make a minute on the said roll and writ of any such forfeited recognizances and fines as he thinks fit to direct not

to be levied; and the Sheriff shall observe the direction in such minute written upon such roll and writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine. C. S. U. C. c. 117, s. 7.

**11.** If upon any writ issued under this Act, the Sheriff takes lands or tenements in execution, he shall advertise the same in like manner as he is required to do before the sale of lands in execution in other cases; and no sale shall take place in less than twelve months from the time the writ comes to the hands of the Sheriff. C. S. U. C. c. 117, s. 8.

Mode of proceeding where lands are seized for payment of fines, &c.

**12.** The Clerk of Assize or Clerk of the Peace shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say :

Clerk of Assize or of the Peace to make affidavit.

"I, A. B., (*describing his office*,) make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances and forfeitures which were set, lost, imposed or forfeited, at or by the Court therein mentioned, and which in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll; and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in Court or otherwise, without any wilful discharge, omission, misnomer, or defect whatever : So help me God."

Form.

which affidavit any Justice of the Peace for the County is hereby authorized to administer. C. S. U. C. c. 117, s. 9.

**13.** If any person on whose goods and chattels a Sheriff, Bailiff or other officer is authorized to levy any such forfeited recognizance, gives security to the said Sheriff or other officer for his appearance at the return day mentioned in the writ, in the Court into which such writ is returnable, then and there to abide the decision of such Court, and also to pay such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as may be adjudged and ordered by the Court, such Sheriff or officer shall discharge such person out of custody; and in case such person does not appear in pursuance of his undertaking, the Court may forthwith issue a writ of *fieri facias* and *capias* against the surety or sureties of the person so bound as aforesaid. C. S. U. C. c. 117, s. 10.

Conditions upon which a party or the goods of a party in custody of the Sheriff may be released.

**14.** The Court of Queen's Bench or Common Pleas, or Court of General Sessions, into which any writ of *fieri facias* and *capias* issued under this Act, is returnable, may inquire into the circumstances of the case, and may, in its discretion, order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as to such Court appears just; and such order shall accordingly be a discharge to the Sheriff, or to the party, according to the circumstances of the case. C. S. U. C. c. 117, s. 11.

Court under certain circumstances may discharge forfeited recognizances, &c.

Manner of re-  
turn by  
Sheriff, &c.

**15.** The Sheriff to whom any writ is directed under this Act, shall return the same on the day on which the same is made returnable, and shall state on the back of the roll attached to such writ, what has been done in the execution thereof; and such return shall be filed in the Court into which such return is made. C. S. U. C. c. 117, s. 12.

Copy of roll  
and return to  
be sent to Pro-  
vincial Treas-  
urer.

**16.** A copy of such roll and return, certified by the Clerk of the Peace, or by the Clerk of the Crown (as the case may be), shall be forthwith transmitted to the Treasurer of the Province, with a minute thereon of any of the sums therein mentioned, which have been remitted by order of the Court, in the whole or in part, or directed to be forborne, under the authority of this Act. C. S. U. C. c. 117, s. 13.

Sheriff to pay  
to Provincial  
Treasurer or  
person enti-  
tled.

**17.** The Sheriff shall, without delay, pay over all moneys by him collected to the Provincial Treasurer or other officer or person entitled to receive the same. C. S. U. C. c. 117, s. 14.

## SCHEDULE.

(Sections 2 and 5.)

WRIT OF *FI. FA.* AND *CAPIAS.*

VICTORIA, by the Grace of God, &c.

To the Sheriff of \_\_\_\_\_, Greeting :

You are hereby commanded to levy of the goods and chattels, lands and tenements of all and singular the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them severally imposed and charged as therein is specified; and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements being to be found belonging to the said parties respectively, then, and in all such cases, that you take the bodies of such parties and keep them safely in the Gaol of your County, there to abide the judgment of Our Court of Queen's Bench (or Common Pleas, or Court of General Sessions, as the case may be) upon any matter to be shown by them respectively, or otherwise to remain in your custody as aforesaid until such debt is satisfied, unless any of such persons respectively gives sufficient security for his appearance at the said Court on the return day hereof, for which you will be held answerable; and what you do in the premises make appear before Us in Our Court of Queen's Bench (or Common Pleas at Toronto, or at the next Court of General Sessions of the Peace, as the case may be) on the day of \_\_\_\_\_ Term next, and have then and there this Writ.

Witness, &c., A. B., Clerk of Assize at the last Assizes (or C. D., Clerk of the Peace) for the County of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

## CHAPTER 89.

## An Act respecting the Appropriation of Fines and Forfeitures in certain cases.

---

Fines imposed by Imperial Acts and appropriated for the benefit of the poor, or for parochial purposes, s. 1.

Fines where no special appropriation is made, s. 2.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. In all cases not otherwise provided for, in which, by any Imperial Statute in force in Ontario, a fine or penalty is imposed in respect to matters within the legislative authority of the Legislature of Ontario, and the whole or any part of the fine or penalty is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to the existing state of Ontario, such fine or penalty, or the part thereof so appropriated, shall when received be paid to the Treasurer of the County or City in which the conviction has taken place, to be appropriated to the purposes thereof, and accounted for in the same manner as the general rates and assessments levied therein are applicable and accountable by law. *See C. S. U. C. c. 118, s. 1.*

The portion of all fines distributed by the law of England to the poor shall be paid to the Treasurers of the Counties or Cities for the purposes of such Counties or Cities.

2. Every fine and penalty imposed for the punishment of any offence prohibited by any statute now or hereafter in force in this Province, and the proceeds of every forfeiture imposed and given to the Crown by any statute now or hereafter in force in this Province, shall, where the disposal of the same is within the power of the Province and no other provision is made in respect thereto, be paid to the Treasurer of the Province, and shall form part of the Consolidated Revenue Fund. *See C. S. U. C. c. 118, s. 2; see also Rev. Stat. c. 1, s. 8 (31).*

Where no appropriation specified fines, &c., shall be paid to the Provincial Treasurer.

[By C. S. U. C. c. 118, ss. 1 & 2, provision is also made for the appropriation of fines, &c., the disposal of which is not within the authority of the Province].



## 6. ADMINISTRATION OF JUSTICE IN UNORGANIZED TRACTS.

### CHAPTER 90.

#### An Act respecting the Administration of Justice in Unorganized Tracts.

##### TEMPORARY JUDICIAL DISTRICTS :

Organization, s. 1.

Stipendiary Magistrate, ss. 2-4, 44, 45.

Justices of the Peace, Coroners, &c., ss. 46-51.

Constables, ss. 46-51.

Gaols, ss. 5, 6.

Applications of fines and penalties, ss. 7, 8.

Division Courts and procedure therein ss. 9-25.

Queen's writs in unorganized tracts, s. 26.

District of Nipissing, special provisions as to judicial proceedings, ss. 27, 28.

##### PROVISIONAL JUDICIAL DISTRICTS :

Organization, ss. 29, 30.

Administration of Justice, ss. 31-38.

District of Algoma, special provisions as to judicial proceedings, ss. 39-43.

##### MISCELLANEOUS.

Stipendiary Magistrates in Districts, ss. 44, 45.

Coroners, Justices of the Peace, &c., in Districts, &c., ss. 46-51.

Sittings of County Courts and Courts of General Sessions in Districts, &c., ss. 52-56.

Gaols in Districts, &c., s. 57.

Registration in unorganized tracts ss. 58-62.

Criminal proceedings. *See* C. S. U. C. c. 128, ss. 17, 29, 80, 100, 101, 104, 105, pp. 921-2.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

Lieutenant-Governor may erect certain unorganized tracts into Temporary Judicial Districts.

1. The Lieutenant-Governor may from time to time, by proclamation, declare that, from and after a day to be named therein, certain parts of the unorganized tracts of country bordering on and adjacent to Lakes Superior and Huron, including the islands in those Lakes which belong to this Province, and also all other parts of Ontario, not included within the settled limits of any County shall form a Temporary Judicial District or Temporary Judicial Districts, and in such proclamation define the limits of such District or Districts, and name the same respectively; and the Lieutenant-Governor may from time to time alter the limits and extent of such District or Districts. C. S. U. C. c. 128, s. 1, *first part*.

Tracts not included in Townships may be annexed to such Districts.

2. Any portion or portions of a County not included in any Township may, for all purposes connected with the administration of justice under this Act, be included within the limits of any such Temporary Judicial District as aforesaid, and may again be separated therefrom by the Lieutenant-Governor. C. S. U. C. c. 128, s. 2.

2. The Lieutenant-Governor may from time to time appoint in and for every such Temporary Judicial District, a fit and proper person to be the Stipendiary Magistrate thereof, who shall hold office during pleasure, and exercise within such District, the magisterial, judicial, and other functions hereinafter expressed, and who shall reside in such place within the District for which he is appointed as the Lieutenant-Governor directs. C. S. U. C. c. 128, s. 3.

Stipendiary Magistrate may be appointed in and for each such District.

3. Every such Stipendiary Magistrate shall be paid, out of the Consolidated Revenue Fund of this Province, the yearly sum of one thousand two hundred dollars, to be paid half-yearly on the thirtieth day of December, and the thirtieth day of June in each year, by equal portions, and may moreover have and take to his own use the fees authorized to be taken by Justices of the Peace, or by their clerks in cases of summary conviction. C. S. U. C. c. 128, s. 4.

Salary of such Magistrate.

4. Every such Stipendiary Magistrate shall be *ex officio* a Justice of the Peace for the Temporary Judicial District for which he is appointed, and shall have all the powers, jurisdiction and authority, and shall perform all the duties which a Justice of the Peace in any County now has, and is required to perform within any such County; and all the protections and provisions of law applicable to such Justices of the Peace shall extend and apply to such Stipendiary Magistrate acting within the limits of his Temporary Judicial District; and such Stipendiary Magistrate may and shall act in the execution of the office of Justice of the Peace for such Temporary Judicial District, although he has not such qualification by estate in lands, tenements and hereditaments, as is required by *The Act respecting the Qualification and Appointment of Justices of the Peace*. C. S. U. C. c. 128, s. 5.

Such Magistrate to be a Justice of the Peace; powers as such, &c.

Rev. Stat. c. 71.

5. The Lieutenant Governor may from time to time direct that one or more suitable erections shall be provided by the Commissioner of Public Works in each Temporary Judicial District for the safe custody of prisoners charged with crime or convicted of any offence, and every erection so provided shall be deemed a Common Gaol, and the Common Gaol of such Temporary Judicial District. C. S. U. C. c. 128, s. 9.

Gaols to be provided.

[In C. S. U. C. c. 128, s. 9, the following is added:—

But criminal offenders fully committed for indictment and trial, shall as heretofore be committed to the Common Gaol of the proper County in this Province, to be dealt with according to law, and shall not be detained in the Common Gaol of any Temporary Judicial District an unreasonable time, regard being had to the season of the year and the possibility of travelling at the time of his commitment as aforesaid; and until such erections are provided, offenders may be committed to any suitable place within the Temporary Judicial District. 20 V. c. 60, s. 8.

Provision against unnecessary detention therein.

6. The Stipendiary Magistrate shall from time to time appoint a keeper to every Common Gaol in his Temporary Judicial District, and such gaol-keeper shall perform all the duties,

Keeper of the Gaol.

His remuneration.

and be under and subject to all the liabilities that the gaoler of the Common Gaols in the several Counties in Ontario now perform and are subject to, and shall give such security for the due performance of the duties of his office as the Lieutenant-Governor from time to time prescribes, and every such gaol-keeper shall be paid out of the Consolidated Revenue Fund, such sums of money annually as the Lieutenant-Governor may think reasonable for the services performed. C. S. U. C. c. 128, s. 10.

Application of fines and forfeitures.

7. All moneys arising from penalties, forfeitures and fines imposed by any such Stipendiary Magistrate, or by any Justice of the Peace acting within his Temporary Judicial District when paid and levied, shall (if not directed by law to be otherwise appropriated) be from time to time paid to such Stipendiary Magistrate who shall account for the same, and pay over or disburse the moneys arising therefrom, at such times, in such manner, and to such person or persons, as the Lieutenant-Governor may from time to time direct. C. S. U. C. c. 128, s. 11.

Stipendiary Magistrate to keep minutes, accounts, etc.

8. Every such Stipendiary Magistrate shall keep minutes of every proceeding had by and before him, and shall keep such accounts, make such returns, and collect such information, with respect to the Temporary Judicial District for which he is appointed and the state and condition thereof, as the Lieutenant-Governor may from time to time prescribe and require. C. S. U. C. c. 128, s. 12.

#### DIVISION COURTS.

And define limits.

9. The Lieutenant-Governor may divide each of such Districts into two or more Divisions, and define the limits and extent of every such Division, and number such Divisions, beginning at number one; and may from time to time alter the limits and extent of such Divisions. C. S. U. C. c. 128, s. 1, *last part*.

Court to be held in each Division.

10. For the administration of justice between party and party, Courts of civil jurisdiction shall be held in every Temporary Judicial District, and a Court shall be held in every Division declared and appointed as a Division under the ninth section of this Act at such periods as the Lieutenant-Governor may from time to time order; And the Court to be held in each such Division shall be known by the name and style of "The first (or other, as the case may be) Division Court for the Temporary Judicial District of . . ." C. S. U. C. c. 128, s. 13.

Style of Court.

Magistrate to hold such Court.

11. The Stipendiary Magistrate for each Temporary Judicial District shall preside over the several Division Courts, and to qualify him so to do he shall, in addition to his oath of office as a Justice of the Peace, take the following oath before some person authorized to administer the same, that is to say :

"I do swear that I will truly and faithfully execute the several powers, Oath of office  
 "duties and trusts committed to me by *The Act respecting the Adminis-* of Magistrate  
*tration of Justice in unorganized tracts,* without fear, without favour as Judge.  
 "and without malice : So help me God."

C. S. U. C. c. 128, s. 14.

**12.** The Stipendiary Magistrate shall be the sole Judge in all Stipendiary  
 actions brought in the said Division Courts, and shall determine Magistrate to  
 all questions as well of fact as of law in relation thereto in the be sole Judge.  
 summary manner authorized by this Act; But if he thinks fit  
 to have any fact or facts controverted in a cause, tried by a Jury trial.  
 a jury, a jury of five persons present shall be returned instantly  
 by the Clerk of the Court to try such fact or facts, and the  
 Stipendiary Magistrate may give judgment on the verdict of the  
 jury. C. S. U. C. c. 128, s. 15.

**13.** The Stipendiary Magistrate of every Temporary Judicial Division Court  
 District, as Division Court Judge of the District, shall procedure in  
 have the like jurisdiction and powers as are possessed by Temporary  
 County Court Judges in Division Courts in Counties, and shall Judicial Dis-  
 perform the like duties, and the provisions of The Revised tricts to be  
 Statutes of Ontario, relating to Division Courts in Counties, same as in  
 and the officers thereof, including the Rules or Forms made or Counties.  
 to be made by the Board of County Judges, and the fees  
 payable to the Clerks and Bailiffs shall extend to the Divi-  
 sion Courts of Temporary Judicial Districts—except where  
 inconsistent with this Act, and except that the provisions of  
 law authorizing the signing of judgment by default for want  
 of a notice disputing the plaintiff's claim, or authorizing the  
 garnishment of debts or money demands, shall not apply to the  
 said Division Courts. 40 V. c. 24, s. 10. Proviso.

[Sections 17, 29 and 80, of C. S. U. C. c. 128, are as follows :

**17.** In case the Stipendiary Magistrate removes any such Clerk or Bailiff Proceedings if  
 and appoints another in his place, such Magistrate shall order the books, Clerk or Baliff  
 papers and all documents relating to the business matters of the Division be removed to  
 Court, to be delivered over to the newly appointed Clerk or Bailiff, and if any compel deli-  
 person having the custody of such books, papers or documents, refuses to very of papers,  
 obey such order, Her Majesty's Court of Queen's Bench or Common Pleas in etc., to his suc-  
 Upper Canada, or any Judge thereof in Vacation, upon proof of service of cessor.  
 the order upon such person, may, by rule or summons, call upon him to show  
 cause why such books, papers or documents should not be delivered in con-  
 formity with the order of the said Stipendiary Magistrate ; and upon due  
 proof of the service of such rule or summons, or on hearing the parties, the  
 said Court of Queen's Bench or of Common Pleas, or any Judge thereof in  
 Vacation, may order the issue of an attachment against such person, and in  
 default of the delivering up of the said books, papers or documents, may  
 make such order for the imprisonment or other punishment of such person  
 as the justice of the case to the said Court or Judge seems to require ; and  
 any other person unlawfully holding or getting possession of such books,  
 papers or documents, or any of them, shall be guilty of a misdemeanor.  
 20 V. c. 60, s. 14.

**29.** There shall be a seal for every Court holden under this Act, and all Punishment  
 summonses and other process shall be sealed or stamped with the seal of for forging  
 the Court ; and every person who forges the seal or any process of the seal.  
 the Court, or who serves or enforces any such forged process, knowing the  
 same to be forged, or delivers or causes to be delivered to any person any  
 paper falsely purporting to be a copy of any summons or other process of



the said Court, knowing the same to be false, or who acts or professes to act under any false colour or pretence of the process of the said Court shall be guilty of felony. 20 V. c. 60, s. 23.

Punishment for assaulting any officer, resisting progress, etc.

80. If any officer or Bailiff of any Court holden under this Act, is assaulted while in the execution of his duty, or if any rescue is made or attempted to be made, of any goods or other property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding twenty dollars, to be recovered by order of the Stipendiary Magistrate; and the Bailiff of the Court, or any Peace Officer in any such case, may take the offender into custody (with or without warrant), and bring him before the Stipendiary Magistrate accordingly. 20 V. s. 60, s. 51.]

*The above sections are repealed by 40 V. c. 24, s. 10, and 40 V. c. 6, so far as they relate to matters within the authority of the Legislature of Ontario.*

Certain causes of action not cognizable.

14. The Division Courts holden under the authority of this Act, shall not have cognizance of any action for any gambling debt, or for any spirituous or malt liquors or other like liquors, nor for any action whether brought by the payee or any other person on a note of hand the consideration or any part of the consideration of which was for a gambling debt or for such liquors, nor of any action of ejectment or action in which the title to any corporeal or incorporeal hereditaments, or to any toll, custom or franchise is in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, nor of any action for malicious prosecution, or for libel or slander, or for criminal conversation or seduction or breach of promise of marriage. C. S. U. C. c. 128, s. 23.

Not to be Courts of Record.

15. Nothing herein contained shall be construed to constitute the said Division Courts, Courts of Record; but the judgments in such Courts shall have, and continue to have, the same force and effect as judgments of Courts of Record. C. S. U. C. c. 128, s. 23; 32 V. c. 23, s. 1.

Jurisdiction of the Court.

16. The said Division Courts, shall have jurisdiction, power and authority to hold plea of all personal actions (save as hereinbefore excepted) for or against any person, body corporate or otherwise, where the debt or damages claimed is not more than one hundred dollars, and the Stipendiary Magistrate presiding over such Court shall hear and determine such actions and matters in relation thereto in a summary way, and make such orders, judgments and decrees as appear to him just and agreeable to equity and good conscience. C. S. U. C. c. 128, s. 23.

Mode of proceeding.

Causes of action not to be divided in order to give jurisdiction; but excess may be abandoned.

17. A plaintiff shall not divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of a Division Court holden under the authority of this Act, but any plaintiff, having a cause of action above the value of one hundred dollars, for which a suit might be brought under this Act, if the same were not above that sum, may abandon the excess in the first instance on the face of the claim sued on, and upon proving his case, may recover to an amount not exceeding one hundred dollars, and the judgment of the Court upon such suit shall be in full discharge of all de-

mands in respect of such cause of action, and the entry of judgment shall be made accordingly; but no unsettled account to a greater amount than two hundred dollars shall be sued for in any of the said Courts. C. S. U. C. c. 128, s. 24.

**18.** Any executor or administrator may sue and be sued in any such Division Court, in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like cases would be given or issued in any Superior Court; and any one under the age of twenty-one years may prosecute a suit, in any such Court for any sum of money not exceeding one hundred dollars, due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age. C. S. U. C. c. 128, s. 25.

Executor, etc., may sue and be sued.

Also minors for wages.

**19.** All suits cognizable in a Division Court under this Act may be entered and tried in the Court holden for the Division in which the cause of action arose, or in the Court holden for the Division in which the defendant, or one of the defendants, if there are more than one, dwells or carries on business at the time of action brought; and in actions against Division Court Clerks, shall be entered and tried in the next adjoining Division within the Temporary Judicial District; and with consent of both parties to a suit, the Stipendiary Magistrate may try such suit in any Division Court within the local limits of his jurisdiction. C. S. U. C. c. 128, s. 28.

In what division suits to be commenced.

**20.** The Stipendiary Magistrate holding any Division Court as aforesaid, may, in any case, with the consent in writing of both parties to the suit, order the same, with or without other matters in dispute between the parties and within the jurisdiction of the Court as to subject matter but irrespective of amount if not exceeding eight hundred dollars, to be referred to arbitration to such persons, and in such manner and on such terms as he may think reasonable and just; and such reference shall not be revocable by either party, except by consent of the Stipendiary Magistrate; and the award of the arbitrator or arbitrators or umpire, shall be entered in the cause as a judgment of the Court, and shall be as binding and effectual, to all intents and purposes, as if given by the Stipendiary Magistrate in a cause within his ordinary jurisdiction. C. S. U. C. c. 128, s. 74.

Matters in dispute not over \$800 may be referred to arbitration.

Award to be entered as a judgment.

**21.** The Stipendiary Magistrate may, on application to him within fourteen days after the entry of such award, set the same aside, or may, with the consent in writing of both parties revoke the said reference and order another reference to be made in the manner aforesaid; and when any reference has been made by any such order as aforesaid, either of the parties to the suit may obtain from the Clerk of any Division Court, and cause to be duly served, a summons or subpoena requiring the attendance before the said arbitrators, of any witness resident within any such Temporary Judicial District, in like manner as before the Stipendiary Magistrate at the sittings of the said Division Courts. C. S. U. C. c. 128, s. 75.

Award may be set aside.

Subpoenas to witness before arbitrators.

Parties may agree that the Stipendiary Magistrate shall try any matter not over \$800.

**22.** If the parties between whom differences have arisen agree by a memorandum signed by them to refer their causes of action, claims and demands to the Stipendiary Magistrate of a Temporary Judicial District, and agree that such Stipendiary Magistrate may try and determine the same, the said Stipendiary Magistrate shall have power and jurisdiction so to do, provided the subject matter of difference is upon a cause or causes of action not exceeding eight hundred dollars in amount, and not within the subjects excepted from the jurisdiction of the said Division Courts, and so stated in the memorandum. C. S. U. C. c. 128, s. 76.

Submission to be made in duplicate.

**23.** Every such memorandum shall be executed in duplicate, one of which duplicates shall be filed with the said Stipendiary Magistrate and the other with the Clerk of some one of the said Division Courts, and shall thereupon confer on such Court jurisdiction and authority to hear and determine the matters so referred. C. S. U. C. c. 128, s. 77.

May be filed and proceedings thereon had to judgment in one of the Division Courts.

**24.** Upon such memorandum being filed the plaintiff may enter his claim for suit in such Division Court, and sue out a summons thereupon as in ordinary cases, and the proceedings in the said suit may be conducted to judgment and execution (irrespective of the amount recovered, provided it does not exceed eight hundred dollars) in the same manner as in other suits in the said Court, and the judgment in any such suit shall have the same effect as any other judgment of the Court. C. S. U. C. c. 128, s. 78.

Appeals from Stipendiary Magistrate.

**25.** From the judgment of any Stipendiary Magistrate pronounced in any case tried under sections twenty-one, twenty-two or twenty-three, an appeal shall lie to the Court of Appeal subject to such Rules as to security, stay of proceedings, and otherwise, as the said Court may make in respect thereto, and subject until such Rules are made, to the like Rules, and statutory restrictions as are applicable to appeals from the decision of a Judge of a County Court; but the entry of judgment shall not prevent such appeal being had or proceeded with. 40 V. c. 24, s. 13.

Writs from Courts of Law and Equity to run into the unorganized tracts; to whom to be directed.

**26.** The Queen's Writs shall run from all the Courts of Law and Equity in Ontario into the said unorganized or unsettled tracts of country, and have the same force and effect upon persons and property as similar writs have in the organized parts of Ontario, and unless otherwise specially provided by law, may be directed to the Sheriff of the County next adjacent thereto. C. S. U. C. c. 128, s. 88.

#### *District of Nipissing.*

Actions for causes arising in Nipissing, and not within the jurisdiction of the Division Court.

**27.** When any cause of action wherein the venue is local and which is not within the jurisdiction of the Division Courts of the District, arises in the Temporary Judicial District of Nipissing, the action may be brought and the venue laid in any County or Union of Counties, which adjoins any part of the said District, with the same effect as if the said District of Nipissing

was a part of such County or Union of Counties ; but the Court or a Judge on the application of either party may order that the trial shall take place in any County other than that in which the venue is laid. 40 V. c. 24, s. 15 (1).

**28.** No writ of execution issued against goods and chattels in the District of Nipissing shall have any force or effect to bind such goods and chattels before actual seizure thereof under such writ, unless such writ is directed and delivered to the Sheriff of the County of Renfrew to be executed; and all writs of execution against lands, or for recovering possession of any lands or tenements, in the said District, shall be directed to the Sheriff of the said County of Renfrew; and every writ of execution against lands or goods directed to the said Sheriff of the County of Renfrew shall bind the goods and lands of the debtor within the said District from the time they are delivered to the said Sheriff to be executed; and for the purposes in this section mentioned, the said District shall be part of the bailiwick of the said Sheriff of the County of Renfrew. 40 V. c. 24, s. 15 (2).

Execution against goods in Nipissing to bind from seizure.

#### PROVISIONAL JUDICIAL DISTRICTS.

**29.** The Lieutenant-Governor may, from time to time, by proclamation under the Great Seal, declare that, from and after a certain day to be therein named, a certain part or certain parts or the whole of the unorganized tracts of country in this Province bordering upon and adjacent to Lakes Superior and Huron, including the islands in those lakes which belong to this Province, and also all other parts of Ontario which are not now included within the limits of any County or Township, shall form a Provisional Judicial District or Provisional Judicial Districts, and define the limits of such Provisional Judicial District or Districts; and such Provisional District or Districts shall thereupon be formed accordingly. C. S. U. C. c. 128, s. 92.

Lieut.-Governor may form Provisional Judicial Districts out of unorganized tracts

**30.** The Lieutenant-Governor may, by proclamation as aforesaid, include within the limits of any such Provisional Judicial District, any portion of any County in Ontario not included in any Township: and thereupon such portion shall for all purposes connected with the administration of justice cease to belong to such County; but whenever such portion, or any part thereof, is formed or erected into a Township, the same shall thereupon cease to belong to or form part of the Provisional Judicial District, and shall belong to the County from which it has been detached; and whenever any portion of any such Provisional Judicial District which at the time of the formation thereof was not included in any Township or County, is formed or erected into a Township or Townships, and attached to any County, the same shall in like manner thereupon immediately cease to belong to or form part of such Provisional Judicial District. C. S. U. C. c. 128, s. 99.

Any territory not included in any Township may be included in a Provisional Judicial District.

When it shall be again separated.

**31.** All buildings and erections provided by the Commissioner of Public Works by direction of the Lieutenant-Governor

Certain building to be deemed lands



of such Provisional Judicial Districts. in Council for the holding of Courts and for the safe custody of prisoners in such Provisional Judicial Districts as aforesaid, shall for the time being be deemed the Court Houses and Gaols of each of such Provisional Judicial Districts respectively. C. S. U. C. c. 128, s. 102.

Governor may authorize the holding of certain Courts in such Districts. **32.** The Lieutenant-Governor may during the continuance of any such Provisional Judicial District formed as aforesaid, issue the necessary commissions authorizing the holding therein of Courts of Assize, and Nisi Prius, Oyer and Terminer, and General Gaol Delivery. C. S. U. C. c. 128, s. 93.

Judges of such Provisional Districts, their powers, etc. **33.** The person to be appointed Judge in each such Provisional Judicial District shall be a Barrister of not less than five years' standing at the Bar of Ontario; and such Judge shall have the same powers, duties and emoluments as a County Judge, and he shall hold his office during pleasure, and shall reside within the limits of his Provisional Judicial District, and shall not directly or indirectly practise or carry on or conduct any business in the profession or practice of the law while holding his office of Judge, on pain of forfeiting the same, and under a penalty of four hundred dollars. C. S. U. C. c. 128, s. 94.

Rev. Stat. c. 45, extended to Algoma and all future Provisional Judicial Districts. **34.** *The Act respecting the County Judges Criminal Courts,* shall be construed to extend to the Judge of the District Court of the District of Algoma, and the laws now in force or which may be hereafter passed with respect to Courts of General Sessions of the Peace in Counties, and the powers of the Justices thereat, or with respect to County and Division Courts, or the power, authority or jurisdiction of the Judges of such Courts whether sitting in or out of Court, and to the appointment and duties of Local Crown Attorneys, Clerks of the Peace, Sheriffs, Coroners, Clerks, Constables and all other officers attached to such Courts or employed in the administration of justice in connection therewith, shall, unless it is otherwise provided, or unless there is something in the context indicating a different intention, apply to the Provisional Judicial District of Algoma, and to every Provisional Judicial District hereafter established. C. S. U. C. c. 128, s. 96; 37 V. c. 7, s. 60.

Where Courts to be held, Districts to be substituted for Counties. **2.** Such Courts shall be held at the place in each such Provisional Judicial District which the Lieutenant-Governor in Council by proclamation from time to time appoints, and the word "District" shall be substituted for the word "County" in the titles of such Courts and officers, as well as in the interpretation of such laws, in their application to such Provisional Judicial Districts. C. S. U. C. c. 128, s. 97.

Powers of Justices of the Peace. **35.** The Justices of the Peace appointed for any Provisional Judicial District, or for any part or parts of this Province included therein, or wherein the same may be included, whether in General Sessions assembled within such Provisional Judicial District, or out of Sessions, and the Court of General

Sessions of the Peace for any Provisional Judicial District shall have, use, exercise and enjoy within such Provisional Judicial District all the jurisdiction, powers and authorities, and discharge and perform all the duties which Justices of the Peace in and for any County whether in General Sessions assembled, or out of Sessions, and the Court of General Sessions of the Peace in and for the County, by law had and were entitled and required to use, exercise and enjoy, discharge and perform immediately previous to and upon the twenty-seventh day of August, one thousand eight hundred and forty-one, and also all such other powers and jurisdiction as have been since conferred upon Justices of the Peace for any County, whether in General Sessions assembled, or out of Sessions, and upon Courts of General Sessions of the Peace respectively; but it shall not be necessary for any such Justice of the Peace to possess the property qualification required by *The Act respecting the Qualification and Appointment of Justices of the Peace*; and all such Justices of the Peace and other officers shall be entitled to the benefit of all provisions of law in force in Ontario for the protection of Justices of the Peace and such other officers as aforesaid. C. S. U. C. c. 128, s. 98; 27-8 V. c. 35, s. 1.

Rev. Stat. c. 71, not to apply.

**36.** The Lieutenant-Governor may pay to the Sheriffs and other officers of every Provisional Judicial District, by way of salary or otherwise, out of any unappropriated moneys belonging to the Consolidated Revenue Fund of this Province, such several sums of money as he may think reasonable for the services performed by such officers respectively. C. S. U. C. c. 128, s. 95.

Lieutenant-Governor may pay Sheriff, etc., of such Districts.

**37.** Any Sheriff or other officer whose duty it is or who may be legally required to summon and return jurors or persons to serve as jurors, within any of the said Provisional Judicial Districts, shall and may select, choose and return for such jurors any of the inhabitants of such Provisional Judicial Districts respectively, without reference to the mode prescribed for selecting, balloting or returning jurors by "*The Jurors' Act*," and juries *de medietate lingue*, and juries of a like nature may be ordered by the Court before which any cause in any of the said Provisional Judicial Districts may be pending. C. S. U. C. c. 128, s. 103.

Any persons may be returned as jurors in the said Provisional Judicial Districts.

Rev. Stat. c. 48.

**38.** So soon as Provisional Judicial Districts are formed as hereinbefore provided, including any Temporary Judicial District formed under this Act, the provisions herein contained relating to Temporary Judicial Districts, shall cease to have any force therein except so far as may be necessary for supporting any process and proceedings issued, had or taken before or at the time when such Provisional Districts are formed. C. S. U. C. c. 128, s. 91.

Act how to apply on erection of Provisional Districts.

#### *District of Algoma.*

**39.** The District Court of the District of Algoma shall have jurisdiction in all causes and suits upon contract, to the sum

Jurisdiction of District Court of Algoma on

contracts within the District to \$800.

of eight hundred dollars, where the contract was made within the said District. 38 V. c. 13, s. 6.

Dispensation from issuing precepts for return of panels in Algoma.

**10.** It shall not be necessary to issue precepts for the return of panels of grand or petit jurors for any sittings of the District Court of the District of Algoma, or of the General Sessions of the Peace for the said District, if it appears to the Judge of the said District Court that at such sittings there will be no business to be brought before such jurors. 37 V. c. 7, s. 61.

Clerk of the Peace and District Court to inform the Judges of necessity for precept.

**11.** Where there appears to be need that precepts should issue for the return of panels of jurors aforesaid, it shall be the duty of the Clerk of the Peace of the said District, and the Clerk of the District Court, to inform the said Judge thereof, in order that precepts may be issued for the return of jurors at the ensuing sittings of the Court. 37 V. c. 7, s. 62.

Precepts when jurors required for District Court and Sessions.

**12.** In case jurors are required for either of the said Courts, the necessary precepts shall be issued for both of the said Courts. 37 V. c. 7, s. 64.

Case of jurors being required, and no opportunity to summon before the sittings.

**13.** If the business to be brought before jurors arises so shortly before the sittings, that the jurors cannot reasonably be summoned in sufficient time to attend on the day appointed for the commencement of the sittings, the said Judge may order that the jurors be summoned for a subsequent day, and the said Court shall in such case commence its sittings upon the day by law appointed therefor, and shall dispose of such business as may be disposed of without a jury, and shall be thereafter adjourned to the day for which the jurors are summoned as aforesaid. The said Judge may make the order hereinbefore authorized, on the day upon which the sittings of the said Court commence, or upon any earlier day. 37 V. c. 7, s. 63.

#### STIPENDIARY MAGISTRATES IN DISTRICTS, &c.

Stipendiary Magistrate may sit alone with powers of two Justices.

**14.** Any Stipendiary Magistrate appointed for any District or place, shall have full power to do, alone, whatever is authorized by any Statute in force in this Province relating to matters within the legislative authority of the Legislature of the Province, to be done by two or more Justices of the Peace. 40 V. c. 8, s. 41.

Actions against Stipendiary Magistrate.

**15.** Any suit or action by or against any Stipendiary Magistrate, if the same is within the jurisdiction of any Division Court of his District, may be brought in any Division Court of any adjoining County or District. 40 V. c. 8, s. 14.

#### CORONERS, JUSTICES OF THE PEACE, CONSTABLES IN DISTRICTS AND PROVISIONAL COUNTIES.

Coroners, Justices and Constables in Ter-

**16.** The Lieutenant-Governor may from time to time appoint Coroners, Justices of the Peace or Constables for any Provisional

Judicial, Temporary Judicial or Territorial District or Provisional County, or for any portion of the territory of Ontario not attached to a County for ordinary municipal and judicial purposes. 37 V. c. 7, s. 65. *See also Rev. Stat. c. 71, s. 1; c. 79, s. 1; c. 82, s. 10.*

**47.** In case of any misconduct on the part of a Constable appointed under the preceding section, the Chairman of the Court of General Sessions of the Peace of the District, or the Stipendiary Magistrate, shall have authority to suspend from office indefinitely, or for any period the said Chairman or Stipendiary Magistrate deems fitting. 37 V. c. 7, s. 66.

Suspension from office of Constables for misconduct.

**48.** The Chairman of the Sessions or the Stipendiary Magistrate, upon any such Constable being suspended, shall forthwith report the particulars thereof to the Provincial Secretary, in order that the Lieutenant-Governor may take such action as to the revocation of the suspension or dismissal of such Constable, or otherwise, as he deems proper. 37 V. c. 7, s. 67.

Report of such suspension to Provincial Secretary.

**49.** The Reeves of each Municipality within any Provisional Judicial, Temporary Judicial, or Territorial District, shall *ex officio* be Justices of the Peace for the District in which their respective Municipalities lie. 37 V. c. 7, s. 69.

Reeves in Provisional Judicial Districts, &c., to be Justices of the Peace.

**50.** In case any portion of a County is detached from a County, or Provisional Judicial or other District, and formed into or annexed to a Temporary Judicial or Territorial District, the Justices of the Peace residing in the territory so detached, shall be Justices of the Peace for the Temporary Judicial, or Territorial District in which they reside at the time of the same being so detached, and shall not act out of Sessions as Justices of the Peace for the County or Provisional Judicial District. 37 V. c. 7, s. 68.

Justices of the Peace in portion of a County detached and formed into or annexed to a Temporary Judicial or Territorial District.

**51.** If any Constable appointed for a Temporary Judicial District under the authority of this Act is guilty of any disobedience of orders, neglect of duty, or of any misconduct as such Constable, and is convicted thereof before the Stipendiary Magistrate for the Temporary Judicial District, or before any Justice of the Peace acting therein, he shall forfeit a sum to be fixed by such Magistrate or Justice not exceeding forty dollars and costs, and in default of immediate payment thereof, shall suffer imprisonment for any time not exceeding three months unless such fine and costs are sooner paid; but in case any such person is proceeded against by indictment for any offence committed by him as Constable, he shall not in addition be liable to the penalty or punishment imposed by this section. C. S. U. C. c. 128, s. 8.

Punishment of constable misbehaving.

[By C. S. U. C. c. 128, s. 8, it is also enacted as follows:—

And any such person may be proceeded against by indictment for any offence committed by him as Constable, but not both by indictment and also under this Act for the same offence.]



COURTS IN TERRITORIAL DISTRICTS AND PROVISIONAL  
COUNTIES.

County Court Judge may appoint additional sittings of the Court or of Sessions of the Peace within a Territorial District or Provisional County.

**52.** The Judge of any County or District Court to whose jurisdiction any Territorial District or Provisional County belongs, may appoint additional sittings of the County or District Court and of the Court of the General Sessions of the Peace, or of either of such Courts, to be held at such place or places within such Territorial District or Provisional County as he thinks fit.

2. Such sittings of the County Court shall be for the trial of causes, where the contract was made within the Territorial District or Provisional County; or if the action is not upon contract, then where the cause of action arose within the Territorial District or Provisional County.

3. Such Sessions of the Peace shall be for the trial of causes within the jurisdiction of the General Sessions of the Peace, provided the offence to be tried was committed within such Territorial District or Provisional County. 38 V. c. 13, s. 1.

Lieut.-Governor in Council may require sittings to be held.

**53.** Sittings in any of the said Courts shall also be held under the provisions of this Act at such times and places as the Lieutenant-Governor in Council may appoint. 38 V. c. 13, s. 2.

Appeals to General Sessions.

**54.** In case the Lieutenant-Governor directs sittings of the Court of General Sessions of the Peace of any County or Provisional Judicial District to be held at regular periods at some place within a Territorial District or Provisional County, and issues his proclamation in that behalf, such sittings shall thereafter be the proper Court for the trial of appeals to the General Sessions from a decision, order or conviction made by a Justice of the Peace within such Territorial District or Provisional County, and such Court shall have full and complete jurisdiction and authority for the trial of every such appeal, as well as for the trial, under section fifty-two of this Act, of any person charged with an offence committed within the Territorial District or Provisional County over which the Sessions have jurisdiction.

2. Where an offender may be more conveniently tried within that portion of the County or District outside of such Territorial District or Provisional County, such offender may be so tried. 38 V. c. 13, s. 3.

Superior Courts of Law and Court of Chancery, or a Judge thereof, may order trial of Superior Court actions or examinations of witnesses at the Courts held under this Act.

**55.** Either of the Superior Courts of Law or a Judge thereof may direct that any action of ejectment for the recovery of the possession of lands lying in the Provisional Judicial District, Territorial District, or Provisional County in which any sittings of a County or District Court are to be held, or any other action pending in a Superior Court of Law, shall be tried at such sittings; or may order that the witnesses shall be examined and the facts ascertained at such sittings and the questions of law arising thereon reserved for the opinion of the Court in which the action is pending; or may make

such like order for the purpose of facilitating the determination of the matters in dispute in the action as he may think fit.

2. The Court of Chancery or a Judge thereof may make a similar order in respect of a suit pending in that Court. 38 V. c. 13, s. 4.

**56.** The Sheriff or other officer whose duty it is, or who may be legally required, to summon and return jurors or persons to serve as jurors for such Courts, may select, choose and return for such jurors, in case jurors are required, any of the inhabitants of such Provisional Judicial District, Territorial District, or Provisional County, without reference to the mode prescribed for selecting, balloting or returning jurors by "*The Jurors' Act.*" 38 V. c. 13, s. 5.

Summoning jurors.

Rev. Stat. c. 48. not to apply.

#### GAOLS IN TERRITORIAL DISTRICTS AND PROVISIONAL COUNTIES.

**57.** The Lieutenant-Governor may from time to time direct that one or more suitable gaols or lock-ups shall be provided by the Commissioner of Public Works, in any Territorial District or Provisional County in Ontario. 40. V. c. 24, s. 1.

Gaols, etc., in Districts, etc.

#### REGISTRATION.

**58.** The Lieutenant-Governor in Council may from time to time appoint a Registrar of deeds in and for the Provisional Judicial District of Algoma, the Temporary Judicial District of Nipissing, and for every such District hereafter established in the unorganized tracts of country bordering on and adjacent to Lakes Superior and Huron. C. S. U. C. c. 128, s. 89 ; 29-30 V. c. 48, s. 1.

Registrar of deeds may be appointed for certain tracts.

**59.** The said Registrars shall register all deeds and other conveyances and agreements relating to lands situate in any part of the said Districts and unorganized tracts respectively, and laid out and surveyed by the Crown. C. S. U. C. c. 128, s. 89 ; 29-30 V. c. 48, s. 1.

Duties.

**60.** Every such Registrar shall keep his office in a place to be named for that purpose in his commission, or at such other place as may be appointed for that purpose from time to time by the Lieutenant-Governor in Council. C. S. U. C., c. 128, s. 90. 29-30 V. c. 48, s. 1.

Where Registrar shall hold his office : his duties, fees, etc.

**61.** The duties of such Registrars shall be the same as the duties of other Registrars under the Registry Laws of Ontario ; and their fees shall be the same as those appointed under the said Registry Laws, or the Lieutenant-Governor in Council may order an annual salary, not exceeding eight hundred dollars, to be paid to every such Registrar out of the Consolidated Revenue Fund of this Province, in lieu of such fees ; which fees shall in such case be paid into the Consolidated Revenue Fund. C. S. U. C. c. 128, s. 90 ; 29-30 V. c. 48, s. 1.

Or he may be paid an annual salary.

Securities by  
Registrars of  
Districts of  
Algoma and  
Nipissing

**62.** The provisions of law relating to securities to be given by Registrars in other parts of Ontario shall apply to the Registrars of Deeds of the Districts of Algoma and Nipissing, except that the covenant to be given by such officers shall be for such an amount as the Lieutenant-Governor in Council may determine. 39 V. c. 17, s. 8.

#### CRIMINAL PROCEEDINGS.

*[Sections 100, 101, 104 and 105 of C. S. U. C. c. 128, enact as follows :—*

Where crimes  
and offences  
in unorganized  
tracts may be  
charged to  
have been  
committed  
and be tried.

**100.** All crimes and offences committed in any of the said unorganized tracts of country in Upper Canada, including lakes, rivers and other waters therein, not embraced within the limits of any organized County, or within any Provisional Judicial District, may be laid and charged to have been committed and may be inquired of, tried and punished within any County, and such crime or offence shall be within the jurisdiction of any Court having jurisdiction over crimes or offences of the like nature committed within the limits of the County before which Court such crime or offence may be prosecuted, and such Court shall proceed thereon to trial, judgment, and execution, or other punishment for such crime or offence, in the same manner as if such crime or offence had been committed within the County where such trial is had. 2 W. iv. s. 2; 16 V. c. 176, s. 8; 20 V. c. 60; 59 Geo. iii. c. 10, s. 1.

Where to be  
tried when  
Provisional  
Judicial Dis-  
tricts or new  
Counties are  
formed.

**101.** When any Provisional Judicial District, or new County is formed and established in any of the unorganized tracts of country aforesaid, and is so declared by law, or by the Governor by proclamation under the Great Seal, all crimes and offences committed within the limits of such Provisional Judicial District or new County, shall be enquired of, tried and punished within the same, in like manner as such crimes or offences would have been enquired of, tried and punished if the last preceding section had not been made or passed. 2 W. iv. c. 2, s. 2; 16 V. c. 176, s. 8; 20 V. c. 60; 59 Geo. iii. c. 10, s. 2.]

#### INCITING INDIANS.

Persons incit-  
ing Indians,  
etc., to the  
commission of  
certain offen-  
ces, how pun-  
ishable.

**104.** Any person inciting any Indians or half-breeds frequenting or residing in any of the unorganized tracts of country aforesaid, to the disturbance of the public peace or to the commission of any other indictable offence, shall be guilty of a felony, and upon conviction thereof shall be sentenced to imprisonment for not more than five years nor less than two years in the Provincial Penitentiary. 16 V. c. 176, s. 9.

Persons accus-  
ed or convict-  
ed of crimes in  
any such Pro-  
visional Dis-  
tricts may be  
committed to  
any gaol in  
Upper  
Canada.

**105.** Any person accused of inciting Indians or half-breeds as aforesaid or accused or convicted of any other crime or offence in any such Provisional District as aforesaid may be committed to any common gaol in Upper Canada; and the Constable or other officer having charge of such person, and entrusted with his conveyance to any such common gaol, may pass through any County or Counties in Upper Canada with such person in his custody, and the keeper of the common gaol of any County in Upper Canada in which it may be found necessary to lodge for safe keeping any such person as aforesaid so being conveyed through such County in custody as aforesaid, shall receive such person and him safely keep and detain in such common gaol for such period as may be reasonable or necessary, and the keeper of any common gaol in Upper Canada to which any such person may be committed as aforesaid, shall receive such person and him safely keep and detain in such common gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken. 16 V. c. 176, s. 9.]

## 7. ADMINISTRATION OF JUSTICE IN THE VICINITY OF NIAGARA FALLS.

## CHAPTER 91.

An Act to provide for the better Government of that part of Ontario situated in the Vicinity of the Falls of Niagara.

Appointment of Police Magistrate,	Appeals, s. 7.
s. 1.	Constables, s. 8.
Powers and duties, ss. 2-6.	Expenses under this Act, ss. 9-11.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Lieutenant-Governor in Council may, from time to time, appoint a fit and proper person to be Police Magistrate for the Town of Clifton, in the County of Welland. 37 V. c. 18, s. 1. See 40 V. c. 8, s. 42.

2. The said Police Magistrate shall be *ex officio* a Justice of the Peace of and for the County of Lincoln, and of and for the County of Welland; and may exercise within the said Counties the jurisdiction and authority of two Justices of the Peace in relation to all matters in respect to which the Legislature of this Province has authority so to enact. 37 V. c. 18, s. 2.

3. The said Police Magistrate shall, as often as he considers necessary, or in case the Lieutenant-Governor in Council gives a direction in that behalf, then as often as the Lieutenant-Governor in Council directs, hold a Police Court in the Village of Fort Erie. 38 V. c. 30, s. 2.

4. Subject to the provisions of the preceding section, it shall not be the duty of said Police Magistrate, unless he finds it convenient so to do, to entertain any complaint except with reference to offences committed within the limits of the Town of Clifton or of the Township of Stamford; and he shall, as far as practicable, give precedence to complaints in which persons residing at a distance are concerned, either as parties or as witnesses, over complaints concerning only persons residing in the neighbourhood. 37 V. c. 18, s. 2.

5. In addition to any other penalty imposed by any statute or by any by-law of the Municipality, as a punishment for any offence, the Police Magistrate shall have authority to inflict as an additional punishment, the revocation or the suspension for such period as he may consider just, of any license granted or issued by the municipal officers of the said Town of Clifton or of



the said Township of Stamford, or of the Village of Fort Erie, or of the Township of Bertie, or granted or issued by the Board of License Commissioners or Inspector of Licenses, within whose License District any of said Municipalities respectively is situated. 37 V. c. 18, s. 3; 38 V. c. 30, s. 2; See 39 V. c. 26.

Evidence to be reduced to writing.

6. The Police Magistrate shall, in all cases of complaint under this Act, reduce to writing the whole of the evidence of the witnesses examined before him, and shall read the same over to the witnesses, who shall sign the same. 37 V. c. 18, s. 6. (a.)

Appeals.

7. An appeal shall lie from a conviction had under this Act to the Judge of the County Court of the County in which the conviction is made, without a jury; and except as aforesaid, no appeal shall lie either to any Court of General Sessions of the Peace, or to any other Court, from the conviction or order of the Police Magistrate, for an offence against any statute relating to matters within the legislative authority of the Legislature of this Province, or for an offence against a by-law of a Municipality. 37 V. c. 18, ss. 5 & 6, *part*.

Appointment of constables.

8. The Lieutenant-Governor may appoint as many Constables as he may consider requisite for the efficient administration of justice in the neighbourhood of the Falls of Niagara.

2. No such constable shall be entitled to charge any fees whatever for his own use. 37 V. c. 18, s. 4.

Police Magistrate to keep accounts of fines, etc.

Deposit of fines, etc.

Rev. Stat. c. 181.

9. The Police Magistrate shall keep proper accounts of all fines, penalties and costs imposed in the Police Court of the said Town of Clifton and Village of Fort Erie, or elsewhere imposed by him; and shall immediately upon any such fines, penalties and costs (other than fines arising from prosecutions under "*The Liquor License Act*"), being collected and received, or at such periods as the Treasurer of Ontario from time to time directs, deposit the amount thereof in such bank as the said Treasurer from time to time directs, to the credit of a fund to be called the "Niagara Falls Police Fund."

Rev. Stat. c. 181, ss. 34, 35.

2. All fines from prosecutions under "*The Liquor License Act*," shall form part of the License Fund of the District, to be dealt with as provided by said Act. See 37 V. c. 18, s. 7; 40 V. c. 18, s. 28.

Certain rents, etc., to be applied to defray expenses of this Act.

10. The rents and profits of the land along the bank of the River Niagara, including the descent to the foot of the Falls now held by Her Majesty for the use of the Province, and the said fund, are to be applicable to the payment of the salary of the said Police Magistrate and the salaries of the said constables, and the other expenses of the administration of justice under this Act, and of otherwise carrying out the provisions of this Act. 37 V. c. 18, s. 8.

Salaries.

11. The salary of the said Police Magistrate shall not exceed the rate of one thousand dollars per annum; and the salary of the said constables shall not exceed the rate of forty dollars per month. 37 V. c. 18, s. 9.

## TITLE VII.

## LAW OF PROPERTY.

---

1. *In General.*

- CHAP. 92.—Law of England to govern, p. 936.  
“ 93.—Crown Debtors, p. 937.  
“ 94.—Escheats and Forfeitures, p. 938.  
“ 95.—Law of Property Amendment Act, p. 940.  
“ 96.—Property in Swarms of Bees, p. 945.

2. *Real Property.*

- CHAP. 97.—Rights of Aliens in Real Property, p. 946.  
98.—Transfer of Real Property, p. 947.  
“ 99.—Mortgages of Real Property, p. 951.  
100.—Assurances of Estates Tail, p. 953.  
101.—Partition and Sale of Real Estate, p. 965.  
“ 102.—Short forms of Conveyances, p. 982.  
“ 103.—“ “ Leases, p. 987.  
104.—“ “ Mortgages, p. 990.

3. *Intestate Succession.*

- CHAP. 105.—Descent of Real Estate, p. 1000.

4. *Wills and Executors.*

- CHAP. 106.—Wills, p. 1011.  
107.—Trustees and Executors, p. 1021.

5. *Confirmation and Evidence of Title.*

- CHAP. 108.—Limitations of Actions in respect to Real Estate, p. 1033.  
“ 109.—Evidence between Vendor and Purchaser and the Simplification of Titles, p. 1048.  
110.—Quieting Titles to Real Estate, p. 1050.  
“ 111.—Registration, p. 1063.

## 1. *Law of property in General.*

- 
- CHAP. 92.—Law of England to govern, p. 936.  
 “ 93.—Crown Debtors, p. 937.  
 “ 94.—Escheats and Forfeitures, p. 938.  
 “ 95.—Law of Property Amendment Act, p. 940.  
 “ 96.—Property in Swarms of Bees, p. 945.
- 

## CHAPTER 92.

### An Act respecting Property and Civil Rights.

---

Law of England to be the rule, s. 1.	Statute of Jeofails and Limitations introduced, s. 2.
---	--

---

Recital of Act  
of U. C.,  
32 G. 3., c. 1.

**W**HEREAS by the first Act passed in the first Session of the Parliament of Upper Canada, on the fifteenth day of October, one thousand seven hundred and ninety-two, it was among other things enacted, that in all matters of controversy relative to property and civil rights, the laws of England should be the rule for the decision of the same, and that all matters relative to testimony and legal proof in the investigation of fact should be regulated by the rules of evidence established in England, but that nothing therein contained should extinguish, release, discharge or affect any right, lawful claim or incumbrance to and upon any lands, tenements or hereditaments within Upper Canada, or should rescind, vacate or affect any contract or security then made and executed conformably to the laws of Canada under the Imperial Statute passed in the fourteenth year of the reign of His Majesty King George the Third, intituled “*An Act for making more effectual provision for the Government of the Province of Quebec, in North America,*” or vary or interfere with any of the subsisting provisions respecting ecclesiastical rights or dues, or should introduce any of the laws of England respecting the maintenance of the poor, or respecting bankrupts; Therefore, subject to the exceptions and provisions above recited, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

THE LAW OF ENGLAND TO BE THE RULE.

1. In all matters of controversy relative to property and civil rights, resort shall continue to be had to the laws of England as they stood on the said fifteenth day of October, one thousand seven hundred and ninety-two, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the several Courts of Law and Equity in Ontario, shall continue to be regulated by the rules of evidence established in England, as they existed on the day and year last aforesaid—except so far as the said laws and rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament, still having the force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, still having the force of law in Ontario, or by The Revised Statutes of Ontario. *See C. S. U. C. c. 9, s. 1.*

The law of England to be the rule of decision.

STATUTES OF JEOfAILS AND LIMITATIONS ADOPTED.

2. The Statutes of Jeofails, of Limitations, and for the amendment of the law, excepting those of mere local expediency, which previous to the seventeenth day of January, one thousand eight hundred and twenty-two, had been enacted respecting the law of England and then continued in force, shall be valid and effectual for the same purposes in Ontario, excepting so far as the same have, since the day last aforesaid, been repealed, altered, varied, modified or affected in the manner mentioned in the first section of this Act. *C. S. U. C. c. 9, s. 2.*

Statutes of jeofails, &c., adopted.

CHAPTER 93.

An Act respecting Crown Debtors.

Crown bonds only to bind property as in other cases, s. 1.	bound as in cases between subject and subject, s. 2.
Property of Crown debtors only	Crown liens by registration abolished, ss. 3, 4.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. No bond, covenant or other security made or entered in to since the fifteenth day of August, one thousand eight hun-

Bonds, etc., to the Crown: to bind only



such property as would be bound in other cases.

And so as to property of Crown debtors.

Crown liens by registry of bonds, etc., in Q.B. abolished as to Ontario.

except where proceedings had already caused a charge.

dred and sixty-six, or hereafter made or entered into, by any person to Her Majesty, Her Heirs or Successors, or to any person on behalf of or in trust for Her Majesty, her Heirs or Successors, shall bind the real or personal property of such persons so making and entering into such bond, covenant or other security, to any further, other or greater extent than if such bond, covenant or other security had been made or entered into between subject and subject of Her Majesty. 29-30 V. c. 43, s. 1; See 32 V. c. 29, s. 4 (2).

2. The real or personal property of any debtor to Her Majesty, Her Heirs or Successors, or to any person in trust for or on behalf of Her Majesty, Her Heirs or Successors, for any debt since the said date or hereafter contracted, shall be bound only to the same extent and in the same manner as the real or personal property of any debtor where a debt is due from one subject of Her Majesty to another. 29-30 V. c. 43, s. 2. [SCHEDULE]

3. From and after the first day of January, one thousand eight hundred and seventy-four, any lands theretofore bound by the registration, in the office of the Clerk of the Court of Queen's Bench in Toronto, of any deed, bond, contract or other instrument whereby any debt, obligation or duty is incurred or created to Her Majesty, in respect of any matter within the authority of the Government of Ontario, shall be released from the charge created by such registration; so far as the same is within the authority of the Government of Ontario. 36 V. c. 6, s. 5.

4. Nothing in the last section contained shall be construed to affect the obligations of the parties to any such deed, bond, contract or other instrument, to Her Majesty, or to each other, or to release any charge which may have been, previous to the said first day of January, obtained against any such lands by virtue of any writ or other proceeding. 36 V. c. 6, s. 6.

## CHAPTER 94.

### An Act respecting Escheats and Forfeitures.

Attorney-General may take possession of escheated lands, or bring ejectment without inquest of office, ss. 1, 2.

Lieutenant-Governor may make grants of escheated lands, ss. 3, 4.

Lieutenant-Governor may release forfeited property, or waive the forfeiture, s. 5.

Lieutenant-Governor may assign personalty fallen to the Crown, s. 6.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. Wherever any lands, tenements or hereditaments situate in this Province have escheated to the Crown by reason of the person last seised thereof, or entitled thereto, having died intestate, and without lawful heirs, or have become forfeited for any cause except crime, the Attorney-General may cause possession of such lands, tenements or hereditaments to be taken in the name of the Crown; or, in case possession is withheld, he may cause an action of ejectment to be brought for the recovery thereof, without any inquisition being first necessary. 40 V. c. 3, s. 1.

Attorney-General may take possession of, or bring ejectment for, escheated or forfeited lands

Without inquest of office.

2. The proceedings in such action of ejectment may be in all respects similar to those in other actions of ejectment. 40 V. c. 3, s. 2.

Proceedings.

3. The Lieutenant-Governor in Council may make any grant of lands, tenements or hereditaments, which have heretofore so escheated or become forfeited or hereafter escheat or become forfeited for any cause except crime, or of any portion thereof, or of any interest therein, to any person, for the purpose of transferring or restoring the same to any person or persons having a legal or moral claim upon the person to whom the same had belonged, or of carrying into effect any disposition thereof which such person may have contemplated, or of rewarding any person making discovery of the escheat or forfeiture, as to the Lieutenant-Governor in Council may seem meet. 40 V. c. 3, s. 3.

Lieutenant-Governor may make grants of escheated or forfeited lands

4. Any such grant may be made without actual entry or inquisition being first necessary, and although such lands, tenements or hereditaments are not in the actual possession of the Crown, and notwithstanding that some person claims title thereto adversely to the person whose estates the same had been; and in case possession of the said lands, tenements, or hereditaments is withheld, the person to whom such grant is made shall thereupon be entitled to institute in any Court of competent jurisdiction proceedings for the recovery of said lands, tenements or hereditaments. 40 V. c. 3, s. 4.

without entry or inquest of office being first found.

5. Where a forfeiture takes place of any lands, tenements or hereditaments, or any interest therein, as aforesaid, the Lieutenant-Governor in Council may waive or release any right which the Crown may thereby have become entitled to, so as, by such waiver or release, to vest the property, either absolutely or otherwise, in the persons who would have been entitled thereto but for such forfeiture; and such waiver or release may be either for valuable consideration or otherwise, and may

Lieutenant-Governor may release forfeited property or waive the forfeiture.

be upon such terms and conditions as to the Lieutenant-Governor in Council may seem fit. 40 V. c. 3, s. 5.

Lieutenant-Governor may assign personalty to which the Crown has become entitled.

6. The Lieutenant-Governor in Council may make any assignment of personal property to which the Crown is entitled by reason of the person last entitled thereto having died intestate and without leaving any kin or other persons entitled to succeed thereto, or by reason of the same having become forfeited to the Crown, for any cause except crime, or may make an assignment of any portion of such personal property, for the purpose of transferring or restoring the same to any person or persons having a legal or moral claim upon the person to whom the same had belonged, or for carrying into effect any disposition thereof which such person may have contemplated, or of rewarding any person making discovery of the right of the Crown to such property, as to the Lieutenant-Governor in Council may seem meet. 40 V. c. 3, s. 6.

## CHAPTER 95.

### An Act to amend the Law of Property in Ontario.

Rent charges, effect of release part of hereditaments charged, s. 1.	of title, s. 4.
<i>Scintilla juris</i> no longer necessary, s. 2.	Purchases of reversions, ss. 5-9.
Contingent remainders not to be defeated by forfeiture, surrender or merger of preceding estate, s. 3.	Assignment of personalty to assignor and another jointly, s. 10.
Improvements made under mistake	Voluntary conveyances, s. 11, 12.
	Fraudulent conveyances, s. 13.
	Powers of Attorney, ss. 14, 15.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### RENT-CHARGES.

Release of part of land charged not to be an extinguishment of the charge on the rest, &c.  
Imp. Act 22-23 V. c. 35, s. 10.

1. The release from a rent-charge of part of the hereditaments charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice, nevertheless, to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release. 29 V. c. 28, s. 10.

## PROVISIONS FOR CASES OF FUTURE AND CONTINGENT USES.

**2.** Where by any instrument any hereditaments are limited to uses, all uses thereunder, whether expressed or implied by law, and whether immediate or future, or contingent or executory, or to be declared under any power therein contained, shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised to the uses; and the continued existence in him or elsewhere of any seisin to uses or *scintilla juris*, shall not be deemed necessary for the support of, or to give effect to future or contingent or executory uses; nor shall any such seisin to uses or *scintilla juris* be deemed to be suspended, or to remain or to subsist in him or elsewhere. 29 V. c. 28, s. 18.

In case of limitation to uses, they shall take effect as they arise without continued seisin or *scintilla juris* in the persons originally seised.  
Imp. Act 23-24 V. c. 38, s. 7.

## CONTINGENT REMAINDERS.

**3.** Every contingent remainder existing on the second day of March, 1877, or created since that day or hereafter, shall be, and every contingent remainder, which existed at any time between the thirtieth day of May, one thousand eight hundred and forty-nine, and the second day of August, one thousand eight hundred and fifty-one, shall be deemed to have been, capable of taking effect, notwithstanding the determination by forfeiture, surrender or merger, of any preceding estate of freehold. C. S. U. C. c. 90, s. 6; 40 V. c. 8, s. 39.

Certain contingent remainders not to be defeated by forfeiture surrender or merger of preceding estate.

## IMPROVEMENTS UNDER MISTAKE OF TITLE.

**4.** In every case in which any person makes lasting improvements on any land under the belief that the land is his own, he or his assigns shall be entitled to a lien upon the same to the extent of the amount by which the value of such land is enhanced by such improvements; or shall be entitled or may be required, to retain the land if the Court is of opinion or requires that such should be done, according as may, under all the circumstances of the case, be most just, making compensation for the land, if retained, as the Court may direct. 36 V. c. 22, s. 1; 40 V. c. 7, *Sched. A.* (114).

Persons improving lands to have a lien on lands.

## PURCHASES OF REVERSIONS.

**5.** In case any purchase made before the fourth day of March, 1868, of any reversionary interest in real or personal estate is sought to be opened or set aside on the ground of undervalue, the onus of proving undervalue shall lie upon the plaintiff. 31 V. c. 27, s. 2.

*Onus probandi* of undervalue to lie on plaintiff in setting aside purchase of a reversion before 4th March, 1868.

**6.** No purchase made after the said date *bona fide*, and without fraud, of any reversionary interest in real or personal estate shall be opened or set aside on the ground of undervalue. 31 V. c. 27, s. 3.

Purchases after that date not affected by undervalue.

**7.** In construing the two preceding sections the word "Purchase" shall mean any kind of contract, conveyance or

"Purchase"—what it shall mean.



assignment, under or by which any kind of property may be acquired. 31 V. c. 27, s. 1.

Purchaser of mortgage may set up defence of purchase for value without notice.

8. The purchaser in good faith of a mortgage may, to the extent of the mortgage (and except as against the mortgagor, his heirs, executors, or administrators), set up the defence of purchase for value without notice in the same manner as a purchaser of the property mortgaged might. 39 V. c. 7, s. 10.

Proof of payment of purchase money unnecessary.

9. It shall in no case be necessary, in order to maintain the defence of a purchase for value without notice, to prove payment of the mortgage money or purchase money, or any part thereof. 39 V. c. 7, s. 11; 40 V. c. 7, *Sched. A.* (115).

#### ASSIGNMENT OF PERSONALTY.

Assignment of personalty to self and others. Imp. Act 22-23 V. c. 35, s. 21.

10. Any person shall have power to assign personal property, now by law assignable, in leading chattels real, directly to himself and another person or persons or corporation, by the like means as he might assign the same to another. 29 V. c. 28, s. 19.

#### VOLUNTARY CONVEYANCES.

Notwithstanding 27th Elizabeth, c. 4, no voluntary conveyance, &c., executed in good faith and duly registered to be void merely from absence of valuable consideration.

11. Notwithstanding the provisions of the statute passed in the twenty-seventh year of the reign of Her late Majesty Queen Elizabeth, and chaptered four, no conveyance, grant, charge, lease, estate, incumbrance, limitation of use or uses which is executed in good faith, and duly registered in the proper Registry Office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance to, any subsequent purchaser from the same grantor of the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of the same, shall be or be deemed or taken to be, merely by reason of the absence of a valuable consideration, void, frustrate, or of none effect as against such purchaser, or his heirs, executors, administrators or assigns, or any person claiming by, from, or under any of them. 31 V. c. 9, s. 1.

Not to render valid instruments otherwise void.

12. Nothing in the preceding section contained shall have the effect of making valid any instrument which is for any reason other than or in addition to the absence of a valuable consideration void under the said statute or otherwise; nor shall anything in the preceding section contained have the effect of making valid any instrument as against any purchaser who had, before the twenty-eighth day of February, 1868, entered into a binding contract for, or received his conveyance upon such purchase. 31 V. c. 9, s. 2.

#### FRAUDULENT CONVEYANCES.

Recital of ss. 1 and 2 of 13 Eliz. c. 5, that conveyances,

13. Whereas by the first and second clauses of the Act passed in the thirteenth year of the reign of Her Majesty Queen Elizabeth, it is enacted as follows:—

“For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions more commonly used and practised in these days than hath been seen or heard of heretofore, which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions have been and are devised or contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargain and chevissance between man and man, without the which no commonwealth or civil society can be maintained or continued; all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, writ, judgment and execution, at any time had or made since the beginning of the Queen’s Majesty’s reign, that now is or at any time hereafter to be had or made to or for any intent or purpose before declared or expressed, shall be from thenceforth deemed and taken only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, by such guileful, covinous or fraudulent devices and practices as is aforesaid, are or shall or might be in any ways disturbed, hindered, delayed or defrauded, to be clearly and utterly void, frustrate and of none effect, any pretence, colour, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding.”

judgments,  
&c., to hinder  
or defraud  
creditors be  
void.

And whereas it is also by the sixth clause of the said Act provided and enacted as follows:

“This Act or anything herein contained shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured, which estate or interest is or shall be upon good consideration and *bona fide* lawfully conveyed or assured to any person or persons, or bodies politic or corporate, not having at the time of such conveyance or assurance to them made any manner of notice or knowledge of such covin, fraud or collusion as is aforesaid, anything before mentioned to the contrary thereof notwithstanding.”

Recital of s.  
6, 13 Eliz. c. 5,  
that that Act  
should not ex-  
tend to any  
interest  
conveyed for  
good consider-  
ation, *bona*  
*fide*, without  
notice of fraud.

And whereas there are doubts as to the true construction of

the said Act, and it is expedient to declare the true construction of the same ;

Therefore it is enacted as follows :—

Valuable consideration and intent to pass the interest shall not alone prevent the application of ss. 1, 2, unless on acquisition *bona fide*, without notice of fraud.

1. The first and second clauses of the said Act apply to all instruments executed to the end, purpose and intent in the said clauses set forth, notwithstanding that the same may be executed upon a valuable consideration, and with the intention, as between the parties to the same, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless the same is protected under the sixth clause of the said Act by reason of *bona fides* and want of notice or knowledge on the part of the purchaser. 35 V. c. 11, s. 1.

Existing instruments not affected.

2. This section shall not apply to any instrument executed before the second day of March one thousand eight hundred and seventy-two. 35 V. c. 11, s. 2.

#### POWERS OF ATTORNEY.

As to a power of attorney provided expressly to be exercised after decease of constituent.

14. In case a power of attorney for the sale or management of real or personal estate, or for any other purpose, provides that the same may be exercised in the name and on the behalf of the heirs or devisees, executors or administrators of the person executing the same, or provides by any form of words that the same shall not be revoked by the death of the person executing the same, such provision shall be valid and effectual to all intents and purposes, both at Law and in Equity, according to the tenor and effect thereof, and subject to such conditions and restrictions, if any, as may be therein contained. 29 V. c. 28, s. 23.

As to things done and powers of attorney after the decease, etc., of constituents, without such special provisions.

15. Independently of any such special provision in a power of attorney, every payment made and every act done under and in pursuance of any power of attorney, or any power, whether in writing or verbal, and whether expressly or impliedly given, or an agency expressly or impliedly created after the death of the person who gave such power or created such agency, or after he has done some act to avoid the power or agency, shall, notwithstanding such death or act last aforesaid, be valid as respects every person party to such payment or act, to whom the fact of the death, or of the doing of such act as last aforesaid, was not known at the time of such payment or act *bona fide* done as aforesaid, and as respects all claiming under such last mentioned person. 29 V. c. 28, s. 24.

## CHAPTER 96.

## An Act respecting the right of property in Swarms of Bees.

Bees in state of freedom, s. 1.

Bees reared and kept in hives, s. 2.

Property in a swarm which leaves a hive, ss. 3-5.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Bees living in a state of freedom shall be the property of the person discovering them, whether he is or is not the proprietor of the land on which they have established themselves. 28 V. c. 8, s. 1.

Bees in a state of freedom to be the property of their discoverer.

2. Bees reared and kept in hives shall be private property, and as such shall, to the extent of fifteen hives, be exempt from seizure for debt or for the discharge of any liability whatsoever, save and except the amount of their purchase money. 28 V. c. 8, s. 2. *See also Rev. Stat. c. 66, s. 2.*

But if reared in hives to be private property.

3. Wherever a swarm of bees leaves a hive the proprietor may reclaim them, so long as he can prove his right of property therein, and shall be entitled to take possession of them at any place on which the swarm settles, even if such place be on the land of another person, unless the swarm settles in a hive which is already occupied, in which case the proprietor shall lose all right of property in such swarm: but he shall notify the proprietor of such land beforehand and compensate him for all damages. 28 V. c. 8, s. 3.

Rights of proprietor in case of bees abandoning their hives.

4. Any unpursued swarm which lodges on any property whatsoever, without settling thereon, may be secured by the first comer unless the proprietor of the land objects. 28 V. c. 8, s. 4.

Unpursued swarms.

5. If the proprietor of a swarm of bees declines to follow such swarm, and another person undertakes the pursuit, such other person shall be substituted in the rights of the proprietor, and every swarm which is not followed shall become the property of the proprietor of the land on which it settles, without regard to the place from which it has come. 28 V. c. 8, s. 5.

In case the owner declines to follow his bees.

[The original section adds the following:—

And any person removing such swarm in his absence, and without his consent, shall be guilty of theft.]



## 2. *Real Property.*

- 
- CHAP. 97.—Rights of Aliens in Real Property, p. 946.  
 “ 98.—Transfer of Real Property, p. 947.  
 “ 99.—Mortgages of Real Property, p. 951.  
 “ 100.—Assurances of Estates Tail, p. 953.  
 “ 101.—Partition and Sale of Real Estate, p. 965.  
 “ 102.—Short Forms of Conveyances, p. 982.  
 “ 103.— “ “ Leases, p. 987.  
 “ 104.— “ “ Mortgages, p. 990.
- 

### CHAPTER 97.

#### An Act respecting the rights of Aliens in relation to Real Property.

---

Capacity of Aliens to take and hold real estate, s. 1.	Descent of real estate of an intestate alien, s. 2. Titles before 23rd Nov. 1849, s. 3.
--	--

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Aliens to have the same powers as to real estate as subjects of Her Majesty.

**1.** On and from the twenty-third day of November, 1849, every alien shall be deemed to have had and shall hereafter have the same capacity to take by gift, conveyance, descent, devise, or otherwise howsoever, and to hold, possess, enjoy, claim, recover, convey, devise, impart and transmit real estate in this Province, as natural-born or naturalized subjects of Her Majesty. C. S. C. c. 8, s. 9 (1); 29 V. c. 16, s. 1.

Manner in which real estate of aliens to descend.

**2.** The real estate in this Province of any alien dying intestate, shall descend and be transmitted as if the same had been the real estate of a natural born or naturalized subject of Her Majesty. 29 V. c. 16, s. 1.

Proviso as to rights before 23rd November, 1849.

**3.** Nothing herein contained shall alter, impair or affect or be construed to alter, impair or affect in any manner or way whatsoever, any right or title legally vested in or acquired by any person or persons whomsoever before the twenty-third day of November, 1849. C. S. C. c. 8, s. 9 (2); 29 V. c. 16, s. 1.

## CHAPTER 98.

## An Act respecting the Transfer of Real Property.

Interpretation, s. 1.  
 Corporeal tenements to lie in grant as well as livery, s. 2.  
 Feoffments to be by deed and innocent, s. 3.  
 Partition, exchange, &c., to be by deed, s. 4.  
 Contingent interests, &c., may be disposed of by deed, s. 5.  
 Words "Grant" and "Exchange;" effect of, s. 6.

Deeds of bargain and sale, by corporations, s. 8.  
 Deeds of bargain and sale, enrolment unnecessary, s. 9.  
 Powers, mode of executing, &c., ss. 10, 11.  
 Auctions of estates, ss. 12-17.  
 Frauds on sales and mortgages, s. 18. and 29 V. c. 28, s. 20, p. 951.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act excludes such construction, be interpreted as follows, that is to say: Interpretation of certain words.

(1.) "Land" shall extend to messuages, lands, tenements and hereditaments, whether corporeal or incorporeal, and to any undivided share thereof, and to any estate or interest therein, and to money subject to be invested in the purchase of land or of any interest therein; and

(2.) "Conveyance" shall include a feoffment, grant, lease, surrender, or other assurance of land. C. S. U. C. c. 90, s. 1. "Conveyance"

(3.) "Mortgage" shall include every instrument by virtue whereof land is in any manner conveyed, assigned, pledged or charged as security for the repayment of money or money's worth lent, and to be reconveyed, re-assigned or released on satisfaction of the debt. "Mortgage."

(4.) "Mortgagor" shall include every person by whom any such conveyance, assignment, pledge or charge as aforesaid is made. "Mortgagor."

(5.) "Mortgagee" shall include every person to whom or in whose favour any such conveyance, assignment, pledge or charge as aforesaid is made or transferred. 29 V. c. 28, s. 21. "Mortgagee."

Corporeal tenements, &c., deemed to lie in grant, &c.

2. All corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery. C. S. U. C. c. 90, s. 2.

Feoffments unless by deed to be void.

3. A feoffment otherwise than by deed shall be void at law, and no feoffment shall have any tortious operation. C. S. U. C. c. 90, s. 3.

Partition or exchange of land, &c., unless by deed, to be void.

4. A partition and an exchange of any land, and a lease required by law to be in writing of any land, and an assignment of a chattel interest in any land, and a surrender in writing of any land not being an interest which might by law have been created without writing, shall be void at law, unless made by deed. C. S. U. C. c. 90, s. 4; 32 V. c. 33, s. 3.

Certain interests in land may be disposed of by deed.

5. A contingent, an executory, and a future interest, and a possibility coupled with an interest in any land, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon any land, may be disposed of by deed; but no such disposition shall by force only of this Act defeat or enlarge an estate tail; and any such disposition by a married woman shall be made in conformity with the provisions of "*The Married Woman's Real Estate Act*." C. S. U. C. c. 90, s. 5.

Rev. Stat. c. 127.

No implied warranty, &c., to be created by the word "grant" or "exchange."

6. Neither of the words "grant" or "exchange," in any deed, shall create any warranty or right of re-entry, or covenant by implication except in cases where by any Act in force in Ontario, it is declared that the word "grant" shall have such effect. C. S. U. C. c. 90, s. 10.

This Act not to extend to deeds, &c., executed before 1st January, 1850.

7. The foregoing sections of this Act shall not extend to any deed, act or thing executed or done, or to any estate, right or interest created before the first day of January, one thousand eight hundred and fifty, but they shall extend to and have operation and effect on and from that day. C. S. U. C. c. 90, s. 12.

Corporations aggregate may convey by bargain and sale.

8. Any corporation aggregate in Ontario, capable of taking and conveying land, shall be deemed to have been and to be capable of taking and conveying land by deed of bargain and sale, in like manner as any person in his natural capacity, subject nevertheless to any general limitations or restrictions and to any special provisions as to holding or conveying real estate which may be applicable to such corporation. C. S. U. C. c. 90, s. 13.

Deed of bargain and sale shall not require enrolment.

9. No deed of bargain and sale of land in Ontario, executed subsequently to the sixth day of March, one thousand eight hundred and thirty-four, shall require enrolment or registration to

supply the place of enrolment, for the mere purpose of rendering such bargain and sale a valid and effectual conveyance for passing the land thereby intended to be bargained and sold, but this shall not affect any question of priority under "*The Registry Act*," or any Act heretofore in force respecting the registration of instruments relating to real estate. C. S. U. C. c. 90, s. 14.

ment to render it a valid conveyance.

This shall not affect priority under Rev. Stat. c. 111.

## POWERS.

**10.** A deed hereafter executed in the presence of, and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is especially required that a deed or instrument in writing, made in exercise of such power, shall be executed or attested with some additional or other form of execution or attestation or solemnity: but this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument; and nothing herein contained shall prevent the donee of a power from executing it conformably to the power, by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend. 29 V. c. 28, s. 11.

Mode of executing powers.

Proviso: not to defeat certain directions. Imp. Act 22-23 V. c. 35, s. 12.

**11.** Where, under a power of sale, a *bona fide* sale is made of an estate, with the timber thereon, or any other articles attached thereto, and the tenant for life, or any other party to the transaction, is by mistake allowed to receive for his own benefit a portion of the purchase money or value of the timber or other articles, it shall be lawful for the Court of Chancery, upon any bill or claim or application in a summary way, as the case may require or permit, to declare, that, upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with such interest thereon as the Court directs, and the settlement of the said principal moneys and interest under the direction of the Court, upon such parties as in the opinion of the Court are entitled thereto, the said sale ought to be established; and upon such payment and settlement being made accordingly, the Court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application, as between solicitor and client, shall be paid by the purchaser or the claimant under him. 29 V. c. 28, s. 12.

Sale under power not to be avoided by reason of mistaken payment to tenant for life.

Imp. Act 22-23 V. c. 35, s. 13



## AUCTIONS OF ESTATES.

Construction of particular words.      **12.** In construing the five next succeeding sections of this Act,

"Auctioneer,"      (1.) "Auctioneer" shall mean any person selling by public auction ;

"Puffer,"      (2.) "Puffer" shall mean a person appointed to bid on the part of the seller.    31 V. c. 28, s. 1.

When sale shall be deemed without reserve.      **13.** Unless in the particulars or conditions of sale by auction of any land it is stated that such land will be sold subject to a reserved price, or to a right of the seller to bid, the sale shall be deemed and taken to be without reserve.    31 V. c. 28, s. 2.

Seller not to bid at reserved sales.      **14.** Upon any sale of land by auction, without reserve, it shall not be lawful for the seller or for a puffer to bid at such sale, or for the auctioneer to take, knowingly, any bidding from the seller or from a puffer.    31 V. c. 28, s. 3.

At reserved sales the seller may bid.      **15.** Upon any sale of land by auction, subject to a right for the seller to bid, it shall be lawful for the seller or any one puffer to bid at such auction, in such manner as the seller may think proper.    31 V. c. 28, s. 4.

Seller not authorized to purchase.      **16.** Nothing in the four next preceding sections contained shall be taken to authorize any seller to become the purchaser at the sale.    31 V. c. 28, s. 5.

Act not retrospective.      **17.** The five next preceding sections shall not apply to any sale which took place before the fourth day of March, 1868.    31 V. c. 28, s. 6.

## FRAUDS ON SALES AND MORTGAGES.

Punishment of vendor or mortgagor for fraudulent concealment of deeds, etc. or falsifying pedigree. Imp. Acts 22-23 V., c. 35, s. 24, and 23-24 V. c. 38, s. 8.      **18.** If any seller or mortgagor of land, or of any chattels, real or personal, or *choses in action*, conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such seller or mortgagor, conceals any settlement, deed, will or other instrument material to the title, or any incumbrance, from the purchaser or mortgagee, or falsifies any pedigree upon which the title depends or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall, in addition to any criminal liability he may thereby incur, be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, for any loss sustained by them or either or any of them, in consequence of the settlement, deed, will or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree; and in estimating such damages where the estate is recovered from such purchaser or mortgagee, or from those

claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land. 29 V. c. 28, s. 20.

*[Section 20 of 29 V. c. 28, creates criminal liabilities, and is as follows :*

20. Any seller or mortgagor of land, or of any chattels, real or personal, or choses in action, conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such seller or mortgagor, who shall, after the passing of this Act, conceal any settlement, deed, will or other instrument material to the title, or any incumbrance, from the purchaser or mortgagee, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall be guilty of a misdemeanor, or being found guilty, shall be liable, at the discretion of the Court, to suffer such punishment, by fine, or by imprisonment for any time not exceeding two years, with or without hard labour, or by both, as the Court shall award, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee or those claiming under the purchaser or mortgagee, for any loss sustained by them or either or any of them, in consequence of the settlement, deed, will or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree; and in estimating such damages where the estate shall be recovered from such purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land; but no prosecution for any offence included in this section, against any seller or mortgagor, or any solicitor or agent, shall be commenced without the sanction of Her Majesty's Attorney-General for Upper Canada, or in case that office be vacant, of Her Majesty's Solicitor-General for Upper Canada; and no such sanction shall be given without such previous notice of the application for leave to prosecute, to the person intended to be prosecuted, as the Attorney-General or the Solicitor-General (as the case may be) shall direct; and no prosecution for concealment shall be sustained unless a written demand of an abstract of title was served by or on behalf of the purchaser or mortgagee before the completion of the purchase or mortgage.]

Punishment of vendor or mortgagor for fraudulent concealment of deeds, etc., or falsifying pedigree.  
Imp. Acts 22-23 V., c. 35, s. 24, and 23-24 V. c. 38, s. 8.

Consent of Crown Law Officer to prosecution required.

## CHAPTER 99.

### An Act respecting Mortgages of Real Estate.

Release of equity of redemption to mortgagees, ss. 1-3.

Proof of mortgage account in suits for foreclosure, s. 4.

Executors, &c., of mortgagees may assign, release, &c., legal estate in certain cases, s. 5.

Discharge of mortgage may be made at any time, s. 6.

Receipts of mortgagees or survivor of two or more mortgagees to be effectual discharges, s. 7.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

Mortgagee of freehold property, etc., may receive release, etc., without merger of debt.

**1.** Any mortgagee of freehold or leasehold property, or any assignee of such mortgagee, may take and receive from the mortgagor or his assignee a release of the equity of redemption in such property, or may purchase the same under any judgment or decree or execution without thereby merging the mortgage debt as against any subsequent mortgagee or person having a charge on the same property. C. S. U. C. c. 87, s. 1; 24 V. c. 41, s. 6; 39 V. c. 7, s. 1, *Sched. A*; 40 V. c. 7, *Sched. A* (116).

Where mortgagee shall take release of equity of redemption, etc., subsequent mortgagee not entitled to foreclose or sell property without redeeming, etc.

**2.** In case any such prior mortgagee or his assignee acquires the equity of redemption of the mortgagor in the manner aforesaid, no subsequent mortgagee or his assignee shall be entitled to foreclose or sell such property without redeeming or selling, subject to the rights of such prior mortgagee or his assignee, in the same manner as if such prior mortgagee or his assignee had not acquired such equity of redemption. C. S. U. C. c. 87, s. 2; 24 V. c. 41, s. 6; 39 V. c. 7, s. 2, *Sched. B*.

Priority of mortgage and judgment under Registry Laws not to be affected.

**3.** This Act shall not affect any priority or claim which any mortgagee may have under the Registry Laws. C. S. U. C. c. 87, s. 3; 24 V. c. 41, s. 6.

In proceedings for foreclosure, etc., state of mortgage account may be proved *prima facie*, by statement on oath of assignee of mortgagee.

**4.** On any proceeding for foreclosure by or for redemption against an assignee of a mortgagee, the statement of the mortgage account, under the oath of such assignee, shall be sufficient *prima facie* evidence of the state of such account, and no affidavit or oath shall be required from the mortgagee or any intermediate assignee denying any payment to such mortgagee or intermediate assignee, unless the mortgagor or his assignee, or the party proceeding to redeem, denies by oath or affidavit the correctness of such statement of account. C. S. U. C. c. 87, s. 4.

Executors of mortgagees may assign, etc.

**5.** Where any person entitled to any freehold land by way of mortgage has departed this life, and his executor or administrator has become entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and the legal estate in the land; and such executor or administrator shall have the same power as to any portion of the lands on payment of some part of the mortgage debt, or on any arrangement for exonerating the estate, or any part of the mortgage lands, without payment of money; and such conveyance, assignment, release or discharge shall be as effectual as if the same had been made by the person having the legal estate. 32 V. c. 10, s. 2. *See also Rev. Stat. c. 107, s. 15.*

6. Every certificate of payment or discharge of a mortgage, or of the conditions therein, or of the lands or of any part of the same, or of any part of the money, by the mortgagee, or his assignee, his heirs, executors, administrators, or assigns, or any one of them, at whatsoever time given, and whether before or after the time limited by the mortgage for payment or performance, shall, if in conformity with "*The Registry Act*," be valid, to all intents and purposes whatsoever. 31 V. c. 20, s. 62. *See also Rev. Stat. c. 107, s. 16.*

Certificate of payment, &c., to be valid, at whatever time given.

Rev. Stat. c. 111.

7. The *bona fide* payment of any money to and the receipt thereof by any person to whom the same is payable upon any express or implied trust, or for any limited purpose, and such payment to and receipt by the survivor or survivors of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust or security. C. S. U. C. c. 90, s. 9. *See also Rev. Stat. c. 107, s. 7.*

Receipts of mortgagee, &c., to be effectual discharges.

## CHAPTER 100.

### An Act respecting the Assurance of Estates Tail

Interpretation, s. 1.

Estates tail not barrable by warranty, s. 2.

Tenants in tail empowered to alienate, s. 3.

Power, how to be exercised by tenants in tail, *ex provisione viri*, (under 11 Henry vii. c. 20,) s. 4.

11 Henry vii. c. 20, repealed as to settlements after 1846, s. 5.

Power not exercisable—

(1.) Where reversion is in the Crown, s. 6.

(2.) By tenants in tail, after possibility of issue extinct, s. 6.

(3.) By heirs expectant, so as to bar expectancies, s. 8.

Power to enlarge base fees, s. 6.

Dispositions for a limited purpose, s. 9.

Protector to the settlement:

Owner of first existing estate prior to estate tail, to be, s. 10.

Case of several owners of undivided shares in such estate, s. 11.

Married women when protectors alone, or jointly with their husbands, s. 12.

Protector as to estates restored or confirmed by settlement, s. 13.

Who not to be protector:

Lessees at rent, s. 14.

Doweresses, bare trustees, heirs, executors, &c., s. 15.

Who to be, if owner of prior estate disqualified, s. 16.

Tenant to the *præcipe* when to be, ss. 17, 18.

Bare trustee when to be, s. 19.

Appointment by the settlor, ss. 20, 21.

Court of Chancery, when to be, s. 22.

Power of protector, ss. 23-26.

Confirmation of prior voidable estate by disposition under this Act, s. 27.

Enlargement of base fees by disposition under this Act, s. 28.

Mode of disposition, ss. 29, 30.

To be by deed, s. 29.

Deed to be registered, s. 30.

Mode of giving protector's consent, and its effect, ss. 31-38.

Mode of disposition of entailed money, s. 39.



HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Interpretation  
of words.

1. Wherever the words and expressions following occur in this Act, they shall be construed in the manner hereinafter mentioned :—

“Lands.”

“Lands” shall extend to advowsons, rectories, messuages, lands, tenements, rents and hereditaments of any tenure and whether corporeal or incorporeal, and any undivided share thereof ;

“Estate.”

“Estate” shall extend to an estate in Equity as well as at Law, and shall also extend to any interest, charge, lien or incumbrance in, upon or affecting lands either at Law or in Equity, and shall also extend to any interest, charge, lien or incumbrance in, upon or affecting money subject to be invested in the purchase of lands ;

“Base fee.”

“Base fee” shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred ;

“Estate tail.”

“Estate tail,” in addition to its usual meaning, shall mean a base fee into which an estate tail has been converted ;

“Actual tenant in tail.”

“Actual tenant in tail” shall mean exclusively the tenant of an estate tail which has not been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned to a right.

“Tenant in tail.”

“Tenant in tail” shall mean, not only an actual tenant in tail, but also a person who, where an estate tail has been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred ;

“Tenant in tail entitled to a base fee.”

“Tenant in tail entitled to a base fee” shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail ; and

“Money subject to be invested in the purchase of lands.”

“Money subject to be invested in the purchase of lands” shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce shall extend to lands of any tenure out of Ontario, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase.

2. Every assurance already made or hereafter to be made, Settlement. whether by deed, will, Private Act of Parliament or Act of the Legislature, or otherwise, by which lands heretofore have been or may hereafter be entailed, or agreed or directed to be entailed, shall be deemed a settlement.

3. Every appointment made in exercise of any power con- Appointment in exercise of a power under a settlement. tained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as a part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement.

4. Where any such settlement is made by will, the time of Settlement by will to date from testator's death. the death of the testator shall be considered the time when such settlement was made.

5. But those words and expressions occurring in this section, Proviso. to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is anything in the subject or context repugnant to such construction. C. S. U. C. c. 83, s. 1.

2. All warranties of lands made or entered into by any Estates tail and estates expectant thereon, no longer barrable by warranty. tenant in tail thereof, shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of the estate tail. C. S. U. C. c. 83, s. 3.

3. Every actual tenant in tail, whether in possession, remainder, contingency or otherwise, may dispose of, for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail vested in or which might be claimed by, or which, but for some previous Act, would have been vested in or might have been claimed by the person making the disposition, at the time of his making the same, and also as against all persons, including Her Majesty, Her Heirs and Successors, whose estates are to take effect after the determination, or in defeasance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition is made, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made. C. S. U. C. c. 83, s. 4. Power to dispose of lands in fee simple or for a less estate, &c.

4. Where, under any settlement made before the eighteenth of May one thousand eight hundred and forty-six, any woman is tenant in tail of lands within the provisions of the Act passed in the eleventh year of the reign of His Majesty King Henry the Seventh, entitled "*Certain Alienations made by the wife, of the lands of her deceased husband, shall be void*," the Power of disposition not to be exercised by women tenants in tail, &c. &c. &c. power of disposition hereinbefore contained as to such lands shall not be exercised by her, except with such assent as, if this 11 Hen. vii. c. 20.

Act had not been passed, would, under the provisions of the said Act of King Henry the Seventh, have rendered valid a fine or common recovery levied or suffered by her of such lands. C. S. U. C. c. 83, s. 5.

Except, &c.,  
11 H. vii. c. 20,  
repealed.

5. Except as to lands comprised in any settlement made before the eighteenth day of May, one thousand eight hundred and forty-six, the said Act of the eleventh year of the reign of His Majesty King Henry the Seventh shall be of no force in Ontario. C. S. U. C. c. 83, s. 6.

Power of dis-  
position not  
extend to cer-  
tain tenants in  
tail.

34-5 Hen. viii.  
c. 20.

6. The power of disposition hereinbefore contained shall not extend to tenants of estates tail, who, by the Act passed in the thirty-fourth and thirty-fifth years of the reign of His Majesty King Henry the Eighth, entitled "*An Act to imbar feigned recovery of lands wherein the King is in reversion,*" or by any other Act are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct. C. S. U. C. c. 83, s. 7.

Power to en-  
large base fees  
saving the  
rights of cer-  
tain persons.

7. In every case in which an estate tail in any lands has been barred and converted into a base fee, the person who, if such estate tail had not been barred, would have been actual tenant in tail of the same lands, may dispose of such lands as against all persons, including Her Majesty, Her Heirs and Successors, whose estates are to take effect after the determination, or in defeasance of the base fee into which the estate tail has been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons, in respect of estates prior to the estate tail which has been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made. C. S. U. C. c. 83, s. 8.

Issue inher-  
itable not to bar  
expectancies.

8. Nothing in this Act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein. C. S. U. C. c. 83, s. 9.

Extent of  
estate created  
by a tenant in  
tail by way of  
mortgage or  
for any other  
limited  
purpose.

9. If a tenant in tail of lands makes a disposition of the same, under this Act, by way of mortgage, or for any other limited purpose, then such disposition shall, to the extent of the estate thereby created, be an absolute bar in Equity, as well as at Law, to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition is effected; but if the estate created by such disposition is only an estate *pur autre vie*, or for years, absolute or determinable, or if, by a disposition under this Act by a tenant in tail of lands, an interest, charge, lien or incumbrance is created without a term of years absolute or determinable, or any greater estate for securing or raising the same, then such

disposition shall, in Equity, be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interests, lien, charge or incumbrance, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition is effected. C. S. U. C. c. 83, s. 10.

**10.** If at the time there is a tenant in tail of lands under a settlement, and there is subsisting in the same lands, or any of them, under the same settlement, any estate for years, determinable on the dropping of a life or lives, or any greater estate (not being an estate for years) prior to the estate tail, then the person who is the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being, for all the purposes of this Act, deemed the prior estate,) shall be the protector of the settlement, so far as regards the lands in which such prior estate is subsisting, and shall, for all the purposes of this Act, be deemed the owner of such prior estate, although the same may have been charged or incumbered, either by the owner thereof or by the settlor, or otherwise howsoever, and although the whole of the rents and profits are exhausted, or are required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and an estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement, within the meaning of this clause; and an estate by way of resulting use or trust to or for the settlor, shall be deemed an estate under the same settlement, within the meaning of this clause. C. S. U. C. c. 83, s. 11.

The owner of the first existing estate under settlement prior to an estate tail under the same settlement to be the protector of the settlement.

**11.** Where two or more persons are owners, under a settlement within the meaning of this Act, of a prior estate, the sole owner of which estate, if there had been only one, would in respect thereof have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall, for all the purposes of this Act, be deemed the owner of a prior estate, and shall in exclusion of the other or others of them, be the sole protector of such settlement, to the extent of such undivided share. C. S. U. C. c. 83, s. 12.

Each of two or more owners of a prior estate to be the sole protector as to his share.

**12.** Where a married woman would, if single, be the protector of a settlement in respect of a prior estate, which is not thereby settled or agreed, or directed to be settled to her separate use, she and her husband together shall, in respect of such estate, be the protector of such settlement, and shall be deemed one

When a married woman alone shall be the protector, and where she and her husband together



shall be protector.

owner; but if such prior estate has by such settlement been settled or agreed, or directed to be settled to her separate use, then she alone shall, in respect of such estate, be the protector of such settlement. C. S. U. C. c. 83, s. 13.

As to estates confirmed or restored by settlement.

**13.** Except in the case of a lease hereinafter provided for, where an estate is limited by a settlement, by way of confirmation, or where the settlement merely has the effect of restoring an estate, in either of those cases, such estates shall, for the purposes of this Act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement. C. S. U. C. c. 83, s. 14.

As to leases at rent created by settlement.

**14.** Where a lease at a rent is created or confirmed by a settlement, the person in whose favour such lease is created or confirmed, shall not, in respect thereof, be the protector of such settlement. C. S. U. C. c. 83, s. 15.

Except in the case of a bare trustee (s. 19), no bare trustee, tenant in dower, &c., to be protector.

**15.** No woman in respect of her dower, and (except in the case, hereinafter provided for, of a bare trustee under a settlement made on or before the first day of July, one thousand eight hundred and forty-six) no bare trustee, heir, executor, administrator or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator or assign, shall be the protector of a settlement. C. S. U. C. c. 83, s. 16.

Who shall be the protector where the owner of the prior estate is, by the two last clauses, excluded.

**16.** Where under any settlement there is more than one estate prior to an estate tail, and the person who is the owner, within the meaning of this Act, of any such prior estate, in respect of which, but for the two last preceding clauses, or one of them, he would have been the protector of the settlement, is by virtue of such clauses, or either of them, excluded from being the protector—then the person (if any) who, if such estate did not exist, would be the protector of the settlement, shall be such protector. C. S. U. C. c. 83, s. 17.

Where in the case of the disposition of an estate before the 1st July, 1846, the person to make the tenant to the writ of entry in a recovery shall be the protector.

**17.** Where, on or before the first day of July, one thousand eight hundred and forty-six, an estate under a settlement had been disposed of, either absolutely or otherwise, and either for valuable consideration or not, the person who in respect of such estate would, before the first day of January, one thousand eight hundred and thirty-four, have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of the lands entailed by such settlement, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement. C. S. U. C. c. 83, s. 18.

Where in the case of the disposition of a reversion on or

**18.** Where any person having, on or before the first day of July, one thousand eight hundred and forty-six, either for valuable consideration or not, disposed of, either absolutely or

otherwise, a remainder or reversion in fee in any lands, or created any estate out of such remainder or reversion, would, under this Act, if this clause had not been inserted, have been the protector of the settlement by which the lands were entailed in which such remainder or reversion is subsisting, and thereby be enabled to concur in the barring of such remainder or reversion, which he could not have done if he had not become such protector; then the person who, before the first day of January, one thousand eight hundred and thirty-four, would have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of such lands, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement C. S. U. C. c. 83, s. 19.

before the 1st July, 1846, the person to make the tenant to the writ of entry in a recovery shall be the protector.

**19.** Where, under any settlement of lands made before the first day of January, one thousand eight hundred and thirty-four, the person who, if this Act had not been passed, would have been the proper person to make the tenant to the writ of entry or other writ for suffering a common recovery of such lands, for the purpose of barring any estate tail or other estate under such settlement, is a bare trustee, such trustee shall, during the continuance of the estate conferring on him the right to make the tenant to such writ of entry or other writ, be the protector of such settlement. C. S. U. C. c. 83, s. 20.

Where a bare trustee, &c.

**20.** Any settlor entailing lands may appoint, by the settlement by which the lands are entailed, any number of persons *in esse*, not exceeding three, and not being aliens, to be protector of the settlement, in lieu of the person who would have been the protector if this clause had not been inserted, and either for the whole or any part of the period for which such person might have continued protector; and, by means of a power to be inserted in such settlement, to perpetuate, during the whole or any part of such period, the protectorship of the settlement in any one person or number of persons *in esse*, and not being an alien or aliens, whom the donee of the power thinks proper, by deed, to appoint protector of the settlement, in the place of any one person, or number of persons, who may die, or by deed relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person; but the number of the persons to compose the protector by virtue or means of any such appointment, shall never exceed three. C. S. U. C. c. 83, s. 21.

Power to any settlor to appoint protector.

**21.** Every deed by which a protector is appointed under a power in a settlement, and every deed by which a protector relinquishes his office, shall be void unless registered in the Regis-

Deeds appointing protectors to be registered.

try Office of the County or other Registration Division wherein the lands referred to lie, within six months after the execution thereof; and the person who, but for the last preceding clause, would have been sole protector of the settlement, may be one of the persons to be appointed protector under that clause, if the settlor thinks fit, and shall, unless otherwise directed by the settlor, act as sole protector, if the other persons constituting the protector have ceased to be so by death or relinquishment of the office by deed, and no other person has been appointed in their place. C. S. U. C. c. 83, s. 22.

The Court of  
Chancery to be  
the protector  
of lunatic, etc.

**22.** If any person, protector of a settlement, is a lunatic, idiot, or of unsound mind, and whether he has been found such by inquisition or not, then the Court of Chancery shall be the protector of such settlement, in lieu of the person who is such lunatic or idiot, or of unsound mind, as aforesaid; or, if any person, protector of a settlement, is convicted of treason or felony; or, if any person not being the owner of a prior estate under a settlement, is protector of such settlement, and is an infant; or, if it is uncertain whether such last mentioned person is living or dead—then the Court of Chancery shall be the protector of such settlement, in lieu of the person convicted as aforesaid, or of the person who is an infant, or whose existence cannot be ascertained as aforesaid; or, if any settlor entailing lands declares, in the settlement by which the lands are entailed, that the person who, as owner of a prior estate under such settlement, would be entitled to be protector of the settlement, shall not be such protector, and does not appoint any person to be protector in his stead, then the said Court of Chancery shall, as to the lands in which such prior estate is subsisting, be the protector of the settlement during the continuance of such estate; or if, in any other case, there is subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate is sufficient to qualify the owner thereof to be protector of the settlement, and there happens at any time to be no protector of the settlement as to the lands in which the prior estate is subsisting, the said Court of Chancery shall, while there is no such protector, and the prior estate is subsisting, be the protector of the settlement as to such lands. C. S. U. C. c. 83, s. 23.

Where there  
is a protector,  
his consent  
requisite to  
enable an  
actual tenant  
in tail to  
create a larger  
estate than a  
base fee.

**23.** If at the time when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, is desirous of making under this Act a disposition of the lands entailed, there is a protector of such settlement, then the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the lands entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this Act of the lands entailed, which shall be good against all persons who, by force of any

estate tail vested in or which might be claimed by, or which but for some previous act or default would have been vested in or might have been claimed by, the person making the disposition at the time of his making the same, may claim the lands entailed. C. S. U. C. c. 83, s. 24.

**24.** Where an estate tail has been converted into a base fee, in such case, so long as there is a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred, to exercise, as to the lands in respect of which there is such protector, the power of disposition hereinbefore contained. C. S. U. C. c. 83, s. 25.

Where a base fee and a protector, his consent requisite to the exercising of a power of disposition.

**25.** Any device, shift, or contrivance by which it is attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and a Court of Equity shall not control or interfere to restrain the exercise of his power of consent, nor treat his giving consent as a breach of trust. C. S. U. C. c. 83, s. 26.

The protector to be subject to no control in the exercise of his power of consenting.

**26.** The rules of Equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised, shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement, upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act. C. S. U. C. c. 83, s. 27.

Certain rules of equity not to apply between the protector and a tenant in tail.

**27.** Where a tenant in tail of lands under a settlement has created in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and afterwards, by any assurance other than a lease not requiring enrolment, makes a disposition, under this Act, of the lands in which such voidable estate has been created, or any of them, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector (if any) of the settlement, or by the tenant in tail alone, if there be no such protector, have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act; but if, at the time of making the disposition, there is a protector of the settlement, and such protector does not consent to the disposition, and the tenant in tail is not without such consent capable under this Act of confirming the voidable estate to its full extent, then such disposition shall have the effect of confirming such voidable estate so far as such

A voidable estate by a tenant in tail in favour of a purchaser confirmed by a subsequent disposition of such tenant in tail under this Act, but not against a purchaser for value without notice.



tenant in tail would then be capable under this Act of confirming the same without such consent; But if such disposition is made to a purchaser for valuable consideration, not having express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him. C. S. U. C. c. 83, s. 28.

Base fees when united with the immediate reversions enlarged instead of being merged.

**28.** If a base fee in any lands, and the remainder or reversion in fee in the same lands, were on the eighteenth day of May, one thousand eight hundred and forty-six, or at any time since have been, or after this Act takes effect are united in the same person, and there is no intermediate estate between the base fee and the remainder or reversion, then the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this Act, if such remainder or reversion had been vested in any other person. C. S. U. C. c. 83, s. 29.

Tenant in tail may make a disposition by deed but not by will or contract, and if a married woman, under The Married Woman's Real Estate Act.

**29.** Every disposition of lands under this Act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were an estate at Law in fee simple absolute; but no disposition by a tenant in tail shall be of any force, either at Law or in Equity, under this Act, unless made or evidenced by deed; and no disposition by a tenant in tail resting only in contract, either express or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force at Law or in Equity under this Act, notwithstanding such disposition is made or evidenced by deed; and, if the tenant in tail making the disposition is a married woman, any deed executed by her for effecting the disposition shall be made in conformity with the provisions of "*The Married Woman's Real Estate Act.*" C. S. U. C. c. 83, ss. 30 & 43; 36 V. c. 18, s. 3.

Rev. Stat. c. 127.

Every assurance by a tenant in tail, except a lease not exceeding 21 years or not exceeding 12 months at a rack-rent, or five-sixths of a rack-rent, to be inoperative unless registered within six months.

**30.** No assurance by which any disposition of lands is effected under this Act by a tenant in tail thereof (except a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or from any time not exceeding twelve months from the date of such lease, where a rent is thereby reserved, which, at the time of granting such a lease is rack-rent, or not less than five-sixth parts of a rack-rent) shall have any operation under this Act unless it is registered in the Registry Office of the County or other Registration Division wherein the lands referred to lie, within six months after the execution thereof. C. S. U. C. c. 83, s. 31.

Consent of protector to be by the same or a distinct deed.

**31.** The consent of the protector of a settlement to the disposition under this Act of a tenant in tail, shall be given either by the same assurance by which the disposition is effected, or by a deed distinct from the assurance, and executed either on or at any time before the day on which the assurance is made, otherwise the consent shall be void. C. S. U. C. c. 83, s. 32.

**32.** If the protector of a settlement gives his consent to the disposition of a tenant in tail by a distinct deed, it shall be considered that such protector has given an absolute and unqualified consent, unless in such deed he refers to the particular assurance by which the disposition is effected, and confines his consent to the disposition thereby made. C. S. U. C. c. 83, s. 33.

If by distinct deed, to be deemed unqualified unless otherwise expressed.

**33.** The protector of a settlement, who, under this Act has given his consent to the disposition of a tenant in tail, shall not revoke such consent. C. S. U. C. c. 83, s. 34.

Protector not to revoke his consent.

**34.** Any married woman, being, either alone or jointly with her husband, protector of a settlement, may, under this Act, in the same manner as if she were a *feme sole*, give her consent to the disposition of a tenant in tail. C. S. U. C. c. 83, s. 35.

A married woman protector.

**35.** The consent of a protector to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition is effected by the tenant in tail, be void, unless such deed is registered in the Registry Office of the County or other Registration Division wherein the lands referred to lie, either at or before the time of the registry of the assurance. C. S. U. C. c. 83, s. 36.

Consent by distinct deed void, unless registered with or before assurance.

**36.** In cases of disposition of lands under this Act by tenants in tail thereof, and also in cases of consents by protectors of settlements to dispositions of lands under this Act by tenants in tail thereof, the equitable jurisdiction of the Courts shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration, or not, in regard to the specific performance of contracts and the supplying of defects in the execution either of the powers of disposition given by this Act to tenants in tail, or of the powers of consent given by this Act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement, which, in a Court of Law, would not, but for the provisions conferring equitable jurisdiction on Courts of Law enacted by "*The Administration of Justice Act of 1873*," and re-enacted in these Revised Statutes, be an effectual disposition or consent within the meaning of this Act; and no disposition of lands under this Act by a tenant in tail thereof in Equity, and no consent by a protector of a settlement to a disposition of land under this Act by a tenant in tail thereof in Equity, shall be of any force, unless such disposition or consent would, in case of an estate tail at Law, be an effectual disposition or consent within the meaning of this Act in a Court of Law, but for the provisions aforesaid. C. S. U. C. c. 83, s. 37.

Equitable jurisdiction of the Courts excluded from giving any effect to dispositions in tail, etc.

36 V. c. 8.

**37.** In every case in which the Court of Chancery is the protector of a settlement, such Court, while protector of such settlement, shall, on motion or petition in a summary way by a tenant in tail under such settlement, have full power to

When the Court of Chancery may consent to a disposition by a tenant in tail,

and make  
such orders as  
are thought  
necessary.

consent to a disposition, under this Act, by such tenant in tail; and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid, shall be such as may be approved of by the said Court, and the said Court may make such orders in the matter as may be thought necessary; and if such Court, in lieu of any such person as aforesaid, is the protector of a settlement, and there is any other person protector of the same settlement jointly with such person as aforesaid, then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person, being protector as aforesaid, consents thereto in the manner in which the consent of the protector is by this Act required to be given. C. S. U. C. c. 83, s. 38.

Order of the  
Court of Chan-  
cery to be  
evidence of  
consent.

**38.** In every case in which the Court of Chancery is the protector of a settlement, no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition has been made. C. S. U. C. c. 83, s. 39.

Mode of dispo-  
sition of money  
subject to be  
invested in  
lands to be  
entailed.

**39.** Lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof is subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall, for all the purposes of this Act, be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this Act, so far as circumstances will admit, shall, in the case of the lands to be sold as aforesaid being either freehold or leasehold, or of any other tenure, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of lands to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; except that in every case, where under this clause a disposition is to be made of leasehold lands for years absolute or determinable, so circumstanced as aforesaid, or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favour or for whose benefit the disposition is made, be treated as personal estate, and the assurance by which the disposition of such leasehold lands or money is effected shall be an assignment by deed, which shall have no operation under this Act unless registered in the Registry Office of the County or other Registration Division in which the lands therein referred to lie, within six months after the execution thereof. C. S. U. C. c. 83, s. 40.

## CHAPTER 101.

## An Act respecting the Partition and Sale of Real Estate.

---

Preliminary, ss. 1-3.	Trial of issues, ss. 33, 36.
Partition compulsory on joint tenants, &c., s. 4.	Partition, making of, by real representative, ss. 37-39.
Courts in which proceedings may be instituted, ss. 5-7.	Sale, when may be had, and proceedings, ss. 35, 40-43.
Petition for partition, form of, parties, &c., ss. 8-11.	Reference as to incumbrances, ss. 44-46.
Guardians for infants and persons unheard of for three years, ss. 12-20.	Payment of incumbrances, ss. 47-48.
Incumbrancers, how made parties, s. 21.	Payments to tenants by the curtesy or in dower, s. 49.
Service of petition:	Notices of sale, s. 50.
In case of parties in Ontario, s. 22.	Deed, contents, execution, and effect, s. 51.
In case of parties unknown or without Ontario, ss. 23-27.	Apportionment of costs, s. 52.
Allowance of petition, ss. 28-30.	Application of proceeds, s. 53.
Pleading to petition, ss. 31-32.	Securing purchase money, ss. 54-57.
	Miscellaneous provisions, ss. 58-65.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Partition Act.*"

Short title.

2. In the construction of this Act—

Interpretation clause.

(1.) "Land" and "Lands" shall include lands, tenements, "Land." and hereditaments, and all estates and interests therein;

(2.) "Petitioner" or "Plaintiff" shall include all parties "Petitioner." petitioning by virtue of this Act; and all parties, or those "Plaintiff." made parties to the proceedings under this Act (other than the plaintiffs or petitioners), shall be defendants. 32 V. c. 33, s. 1.

3. The Judge of the Surrogate Court in each County shall be the real representative for all real property within such County, in respect of or to which any person being seised of, or entitled to any estate in fee simple therein, dies intestate, and for all other purposes hereinafter mentioned. 32 V. c. 33, s. 2.

Judge of Surrogate Court to be real representative.

4. All joint tenants, tenants in common, and co-parceners, All parties



having interest or lien may be compelled to make partition or sale.

all doweresses, and parties entitled to dower, tenants by the curtesy, mortgagees, or other creditors having liens on, and all parties whosoever interested in, to or out of, any lands in Ontario, may be compelled to make or suffer partition or sale of the said lands, or any part or parts thereof, as hereinafter mentioned and provided. 32 V. c. 33, s. 4.

In what Court proceedings to be instituted.

5. Where such lands are situate in two or more Counties, the proceedings shall be instituted in the Court of Queen's Bench or Common Pleas, or in the Court of Chancery; and where the lands are situate in one County only, the proceedings may be instituted in the County Court of such County, or in any of the Superior Courts of Law or Equity aforesaid; and such proceedings may be carried on as hereinafter provided. 32 V. c. 33, s. 5.

Proceedings removable from County Court to Superior Courts.

6. The proceedings, upon petition, if commenced in a County Court, may at any time before judgment be removed into either of the Superior Courts of Law or Equity by *certiorari*, to be allowed by any Judge of such Court, on security being given by the party applying for the *certiorari*, for the costs of the proceedings on petition, to the satisfaction of such Judge; and upon any final judgment, decree or order, an appeal may be had by any of the parties interested, in the same manner, and with the same consequences, as in other cases of appeal from the decision of any Court rendering such judgment, decree or order. 32 V. c. 33, s. 37.

When the interests are equitable fees simple.

7. Where the interests in such estate are equitable fees simple, the Court of Chancery alone shall have the same powers upon petition or bill filed in that Court, to act thereupon, as are hereby given to the Courts of Law and Equity in other cases, and the same notices shall be given, served, published, and verified, guardians of infants appointed, and the same rules shall apply as to parties, and the like proceedings shall be had as herein directed. 32 V. c. 33, s. 38.

[For the jurisdiction of the Court of Chancery in Partition, see also *Rev. Stat. c. 40, ss. 52-56*].

Any parties interested may petition for partition or sale.

8. Any party interested in any land in this Province, or the duly authorized agent of any such party, or the guardian (duly appointed by any Surrogate Court) of any infant entitled to the immediate possession of any estate therein, may file a petition in any of the Courts aforesaid, praying that partition of such lands may be made, or that the same may be sold under the directions of the Court wherein the proceedings are taken, or of any Judge thereof: provided that such sale be considered by the said Court or Judge more advantageous to the parties interested: but no proceedings shall be taken under this Act until six months next after the decease of the testator or party dying intestate, in whom the lands or estate in lands to be so partitioned or sold may be vested. 32 V. c. 33, s. 6.

**9.** All proceedings under this Act shall be entitled in the Court in which the same may happen to be instituted, and shall be further described as follows : Entitling of proceedings,

*"In the matter of partition between A. B. (naming the petitioner, or if more than one, naming all the petitioners in full), plaintiff (or plaintiffs), and C. D. (naming every then known party having any legal estate in the lands other than the petitioners) defendants."*

32 V. c. 33, s. 7.

**10.** Every party having, at the time of filing the said petition, any interest as aforesaid, shall be made a party to such partition proceedings ; and the petition shall particularly describe the lands sought to be partitioned or sold, and shall also set forth the interest of the petitioner or petitioners therein, and his, or their respective place or places of residence and occupation, and the estate, rights and titles of all parties interested therein in anywise whatsoever, so far as the same are known to the party or parties petitioning as aforesaid ; and in case one or more of such parties, or the share or extent of interest, or estate in the said lands of any party interested, is or are unknown to the said petitioner or petitioners, he, or they shall set forth the fact thereof in such petition. Every person having an interest shall be made party. What petition shall set forth. 32 V. c. 33, s. 8.

**11.** The truth of the petition, and matters contained therein, shall be verified by the oath or affirmation of at least one petitioner, or his, or their agent or guardian, as the case may be. Such oath or affirmation may be taken before a Judge of any of the said Courts or a Commissioner for taking affidavits therein. To be verified by oath. 32 V. c. 33, s. 8.

**12.** In case any of the parties interested, other than a petitioner by guardian, is an infant, and in case it is satisfactorily proved to the satisfaction of the Court or any Judge of the Court presiding in Chambers, that at least fourteen days' notice has been served on such infant, if resident in the Province of Ontario, or otherwise served as hereinafter provided, that proceedings will be taken under this Act for the partition or sale of the lands, and that such Court or Judge will be applied to, at the time and place specified in such notice, to appoint a guardian to represent the said infant in such proceedings, such Court or Judge shall and may thereupon, whether the said infant resides within or without the Province, appoint a suitable and disinterested person to be a guardian for such infant for the special purpose of taking charge of the interests of such infant in the proceedings upon such petition. In case party interested be an infant. 32 V. c. 33, s. 9.

**13.** Every guardian so appointed shall, before entering upon his duties, execute to the real representative of the County wherein the estate, or any part thereof, is situate, by his own name of office as Surrogate Judge and real representative for the County, and his successors in office, and according to the Guardians to enter into a bond with sureties.

terms of the rule or order appointing such guardian, a bond in such penalty, and with such sureties as the Court in which such proceedings are to be taken, or any Judge thereof presiding in Chambers, directs, and to be allowed by the Master or Clerk, or Deputy Clerk of such Court, upon proper proof of the sufficiency thereof, conditioned for the faithful discharge of the trust committed to the said guardian, and to render a just and true account of his or their guardianship when required by the Court or any Judge thereof, and upon such further conditions as the said Court or Judge may direct; and no proceedings shall be taken upon the petition until such bond has been filed in the office of the Clerk or Deputy Clerk of the Crown, Clerk of the County Court, or Clerk of Records and Writs, or Deputy Registrar of the Court of Chancery, as the case may be, wherein the petition has been filed. 32 V. c. 33, s. 10; 40 V. c. 7, *Sched. A* (117).

Guardians to represent infants.

**11.** After the execution and filing of such bond, such guardian shall represent the said infant in the proceedings upon the said petition; and his acts in relation thereto shall be binding on such infant, and shall be as valid as if done by such infant after having arrived at full age. 32 V. c. 33, s. 11.

Attorneys or solicitors may be appointed guardians.

**15.** A solicitor or attorney may be appointed guardian for any infant defendant, and in such case it shall not be necessary to file any bond or other security, but it shall be necessary that everything be proved against the said infant, and it shall not be competent for any such guardian to give any consent on behalf of the said infant, but the Court or Judge may, on behalf of the infant, where it is deemed advisable in the interest of such infant so to do, consent to such proceeding. 36 V. c. 16, s. 6.

Appointment of guardian to the estate of one unheard of for three years.

**16.** If any party interested in the estate respecting which proceedings are, or are proposed to be, taken under this Act, has not been heard of for three years or upwards, and it is a matter of uncertainty whether such party is living or dead, it shall be competent for a Judge to appoint a suitable and disinterested person to be a guardian, for the special purpose of taking charge of the interest of the said party, and of those who, in the event of his being dead, are entitled to his share or interest in the said estate. 36 V. c. 16, s. 12.

Application to appoint guardian.

**17.** Such application may be made by any one interested in the said estate, and the Judge making such appointment may give such directions as may be necessary, for the execution of sufficient bonds which shall be entered into by the said guardian so appointed, with sureties in the manner provided by the thirteenth section of this Act. 36 V. c. 16, s. 13.

Powers of guardian.

**18.** After the execution and filing of such bond, such guardian shall, in the said proceedings, represent the said party, and

those who, should he be dead, are entitled to his share or interest in the said estate, and whether they or any of them be infants or otherwise under disability; and his acts in relation to such share or interest shall be binding on such party, and all others claiming or entitled to claim under or through him, and shall be as valid as if done by him or them. 36 V. c. 16, s. 14.

**19.** It shall be competent for the Court in which the proceedings are taken, upon proof of such long-continued absence of the said party as affords reasonable ground for believing him dead, upon the application of such guardian, or any one interested in the estate represented by such guardian, to deal with the estate or interest of such party, or the proceeds thereof, and order the payment of such proceeds, or the income or produce thereof, to the person or persons who, in the event of the said party being regarded as dead, appear entitled to the same. 36 V. c. 16, s. 15.

Power of the Court to deal with the estate.

**20.** Any guardian appointed under this Act shall be at liberty to apply to the Court from time to time, for direction and guidance in the management of the said estate, and for compensation for his services in connection therewith; and the Court, or a Judge thereof, may make all such orders, and give such directions in reference thereto, as to the said Court or Judge appear just. 36 V. c. 16, s. 16.

Guardian may apply to the Court for guidance.

**21.** It shall not be compulsory, in the first instance, to make any person, having a lien on the estate, or any part thereof, by decree, mortgage or otherwise, a party to the proceedings, but the petitioner may make such creditor a party, and, in such case, the petition shall set forth the nature of the lien or incumbrance; and if such lien or incumbrance is on the undivided interest or estate of any of the parties to the petition, it shall be a lien only on the share of such party; and such share or estate, as the case may be, shall be first charged with its just proportion of the costs of the proceedings in partition in preference to any such lien.

Incumbrancers may be made parties after proceedings commenced.

2. If the person having such lien is not made a party to the proceedings, his lien shall not be impaired or affected thereby. 32 V. c. 33, s. 12.

Proviso.

**22.** In cases where all the parties interested, or known to be interested, in the estate respecting which the proceedings are taken under this Act, are residents, or happen, for the time being, to be in the Province, a copy of the petition, with notice that the same will be presented to the Court wherein the proceedings are taken, or any Judge thereof presiding in Chambers, on some day and hour to be named therein, shall be personally served thirty clear days previous to the said day of presenting the same as aforesaid, on all the parties, whether infants or not, resident or being as aforesaid in the Province, who are interested in the lands and estate in question, or

How petition served when all parties in Ontario.



on any duly authorized agent or attorney of any of the parties interested in such estate.

2. Every such notice shall be addressed to all the parties interested who are known, and generally to all others who are unknown, having or claiming any interest in such estate, or whom it may concern.

3. It shall not be necessary to serve such petition or notice upon any guardian appointed as aforesaid, if the same has been previously served upon the infant for whom such guardian has been appointed. 32 V. c. 33, s. 13.

How petition served when parties unknown, or reside abroad, etc.

**23.** If any parties having such interest are unknown, or if known, reside out of the Province, or cannot be found therein, and have no known attorney or agent residing therein, the petition and notice may be served upon them, or any of them, by publication of a notice which shall set forth the names of the plaintiffs and defendants, and shall be directed to the defendants and to all unknown persons having or claiming any interest in the land, and describing it as it is described in the petition, and stating the Court to which, and the time and place when and where, the said petition will be presented, and calling upon all persons then and there to appear and state what claims, if any, they have to the said land, and stating that in default of their so appearing the said matter will be proceeded with in their absence.

2. The form of said notice shall be settled in each case by the Judge before publication thereof. 32 V. c. 33, s. 14; 36 V. c. 16, s. 1.

Publication of notice in *Gazette* and newspapers.

**24.** The said notice shall be published in the *Ontario Gazette* for four weeks before the presentation of the said petition, and in a paper published in the County within which the lands lie, and if there is no such paper, then in a newspaper published in the City of Toronto once in each week for four weeks before the time when the petition is to be presented. 36 V. c. 16, s. 2.

Notice to be posted on court-house and school-house.

**25.** A copy of the said notice shall be put up at or near the door of the Court-house of the County wherein the lands lie more than four weeks before such time, and shall at the same time be put up at the school-house of the section or school division within which the said land is situate. 36 V. c. 16, s. 3.

Service by posting up to be deemed personal.

**26.** Such publication, upon proof thereof by affidavit, shall to all intents and purposes be equivalent to personal service upon all or any such unknown or absent parties. 32 V. c. 33, s. 14.

Service may be made upon attorney or

**27.** The petition and notice may be personally served, without such publication, on any known absent party or parties, or upon his, or their attorney or attorneys, agent or agents,

if he or they has or have any, residing in Ontario, thirty agent in Ontario.  
clear days previous to the presentation thereof, and the reasonable costs of serving such absent parties shall be taxable as costs of the proceedings. 32 V. c. 33, s. 14.

**28.** Upon the presentation of a petition, and upon such proof of service or publication thereof, with the notice as aforesaid, and of the facts justifying the mode of publication, as may be satisfactory, the Court or any Judge thereof presiding in Chambers shall and may by rule or order allow the said petition. Allowance of petition.  
32 V. c. 33, s. 15.

**29.** Immediately after the allowance of the said petition, upon the application of the party prosecuting the same, the Registrar, Deputy Registrar, or Clerk of the Court, shall sign a certificate which shall set forth that the petition was allowed for partition of the lands and tenements, describing them, which certificate may be registered in the Registry Office for the County or other Registration Division in which the lands lie. Registration of petition.  
36 V. c. 16, s. 9.

**30.** Upon the petition being allowed, notice of the rule or order of allowance and any copies thereof, and all other rules, orders or copies, notices or other paper writings in any proceeding, subsequent to the service of the petition, unless otherwise in this Act specially directed, may be served on the attorney or solicitor of any party so pleading, or answering, and in case there is no attorney or solicitor, by posting up the same in the office of the Clerk or Deputy Clerk of the Crown, County Court Clerk, or Clerk of Records and Writs, or Deputy Registrar of the Court of Chancery, as the case may be, in the County wherein the estate or any part thereof is situate, which posting shall be equivalent to and effectual as personal service on the party or parties to be affected thereby. How notice of allowance, &c., served.  
32 V. c. 33, s. 16 ;  
40 V. c. 7, *Sched. A* (118).

**31.** Upon the allowance of the said petition the parties interested in the estate shall and may appear in person or by attorney or solicitor, and by a concise statement of facts under oath, by way of plea or answer, and further, according to the practice of the Court in which the petition has been filed, show title as to the proportions which they or any of them claim of the premises set forth in the petition, within fifteen days next after being served with a copy of the said rule or order, with a notice annexed thereto or endorsed thereon, requiring them to plead or answer within the time above specified. Pleadings to petition.  
32 V. c. 33, s. 15.

**32.** Any party appearing may plead or answer under oath, either separately or jointly with one or more of his co-defendants, that the petitioners, or any of them, at the time of prosecuting the petition, were not entitled to or in possession of the premises or any part thereof ; or that the defendants, or any of them, had no interest in the premises, or did not hold the same, Parties may plead, &c.

together with the petitioners, at the time of the commencement of the proceedings as alleged in the petition; or such other matter as such person shall desire to plead or answer according to the true facts; and, at the expiration of the fifteen days allowed for pleading or answering, the petitioner or petitioners may, upon a verified copy of the petition and of all pleadings that may have been filed as aforesaid, and upon exhibiting *prima facie* proof of his, or their title, and upon such statement or affidavit as may be necessary, apply to the Court or a Judge in Chambers to finally determine any issues or questions raised by any party or parties interested; or for a rule or order directing the trial of any issues of fact that may have been raised by the pleadings; or that a special case may be stated for the opinion of the Court in which the petition has been filed; or both for the trial of an issue of fact or law; or for any other rule or order that the Court or a Judge may think proper under the circumstances. 32 V. c. 33, s. 17.

Issues to be  
tried thereon.

**33.** All issues joined and ordered to be tried by the Court or a jury, shall be tried by such Court or jury, in the same manner as other issues are determined, on a record made up of the said petition and of the defence pleaded thereto; and the like proceedings shall be had thereupon in every respect as to new trials or amendments, and any other particulars, as in personal actions; and any special case so ordered as aforesaid may be made up and proceeded upon, inclusive of signing judgment thereon, in like manner as the law directs for the practice as to special cases. 32 V. c. 33, s. 18.

Proceedings  
in default of  
plea, order,  
etc.

**34.** If none of the parties plead or answer within fifteen days next after the service as aforesaid of the rule or order of allowance of the said petition, the petitioner shall be at liberty to sign judgment of partition; and thereupon, and upon giving and serving fifteen days' written notice thereof, in manner hereinbefore provided, and upon exhibiting the evidence and proof in the next section of this Act mentioned, may apply to the Court or a Judge for the rule or order mentioned in the next and following sections and proceed in the manner in the said sections provided. 32 V. c. 33, s. 19.

Petitioners to  
prove title,  
etc.

**35.** The petitioners shall, whether or not the other parties who have been called upon to appear and plead or answer have appeared and pleaded or answered, exhibit *prima facie* proof of their title at the time of the application for the order or rule for partition; or if an issue in fact has been ordered or a special case stated as aforesaid, then upon the final determination of the questions of law or fact, (if any,) so ordered to be tried as aforesaid, or in any or either of the cases aforesaid, the Court or a Judge shall, by rule or order, determine and declare the rights, title and interests of all the parties concerned, and thereby order the real representative to proceed as hereinafter

directed according to such rights, but not so as to affect any parties whose rights have not been ascertained. 32 V. c. 33, s. 20.

2. The Court or Judge may, if it seems expedient to the said Court or Judge, in the first instance order a sale of the said lands without a reference to the real representative. 36 V. c. 16, s. 4.

Judge may order a sale without a reference.

36. The said Court or Judge shall, by the rule or order of partition in the last section mentioned, direct the real representative to make the partition so adjudged according to the respective rights and interests of the parties, as the same may have been ascertained and determined as aforesaid; and in such rule or order the Court or the Judge shall designate the parts or shares which remain undivided for the owners whose interests are unknown and not ascertained; and the real representative shall forthwith proceed to make such partition, according to the judgment of the Court or Judge, unless it appears to him that the partition cannot be made without prejudice to the owners of the estate, in which case he shall make a return of such fact to the Court in writing under his hand. 32 V. c. 33, s. 21.

Order on real representative to make partition.

37. In making the partition the real representative shall divide the real estate and allot the several portions and shares thereof to the respective parties so adjudged as aforesaid, designating the several shares by posts, stones or other permanent monuments; and he may employ a surveyor to assist him therein; and he shall make or cause to be made a true and accurate plan or map and field book of the land, and shall describe particularly the metes and bounds of the same; and he shall return to the Court or Judge having cognizance of the proceedings, the plan or map, field book and description, and shall report to the Court or Judge in writing the manner in which he has divided the estate, and the share allotted to each party, with the quantity, courses and distances of the boundaries of each share, and a description of the posts, stones or other monuments, together with an account of his fees, which fees, together with any charges for surveys, shall be ascertained and allowed by the Court or Judge; and the amount shall be paid by the petitioners, and shall be allowed to them as part of the costs to be taxed against the estate. 32 V. c. 33, s. 22.

How it shall be made.

Report and return thereon

38. The said report shall be proved by affidavit before a Commissioner for taking affidavits, and shall be filed in the said Court; and a copy thereof, after the report is confirmed by the Court, and certified under the hand of the Clerk and seal of the said Court, shall be registered in the Registry Office of the County or other Registration Division in which the estate is situate, on the production of such copy to the Registrar. 32 V. c. 33, s. 23.

Report proved, etc.

39. Upon the return of the report, the Court or a Judge in Chambers may confirm the same, or remit the same back to

Report to be confirmed or



remitted for  
amendment.

Effect of con-  
firmation.

the real representative for amendment in any particular or particulars in which there is manifest error: and upon a final confirmation a Judge's order may be granted and obtained, confirming in due form the said report; and such order shall be binding and conclusive on all known parties named in the petition, and where publication has been made as aforesaid, then also upon all unknown and absent parties, and all persons claiming from or through them; but such judgment shall not affect any person or persons having claims as tenants, tenants in dower, or by the curtesy, or for life, to the premises which form the subject of such partition, nor any person not named in the petition, either originally or by amendment, nor any unknown person, where there has not been such publication as aforesaid. 32 V. c. 33, s. 24.

Sale if parti-  
tion prejudi-  
cial.

**40.** Upon the report of the real representative that it appears to him that partition cannot be made without prejudice to the owners of, or parties interested in the estate, the Court or a Judge in Chambers may order a sale of the estate, if deemed prudent so to do; and, by a rule or order to be made on filing the said report, may direct and order the real representative to cause the said estate, or any part thereof, to be sold by a fit and proper duly licensed auctioneer (to be approved of by the said real representative), at public auction to the highest bidder, reserving to the real representative power, from time to time, to adjourn the sale, if in his judgment an adequate price is not bid for the estate, or any part thereof; and in such rule or order, the Court or Judge shall direct the terms of payment of the purchase money, and the credit which may be allowed for any portions thereof, of which such Court or Judge may think proper to direct the investment, and which are required, by the provisions hereinafter contained, to be invested for the benefit of any unknown owners, infants, parties out of the Province, or any tenants for life, in dower, or by curtesy or otherwise; and such portions of the purchase money for which credit is allowed shall be secured at interest by a mortgage of the premises sold, by a covenant or bond of the purchaser, and by such other security as the Court or Judge aforesaid may prescribe in the said rule or order, or direct. 32 V. c. 33, s. 25; 40 V. c. 7, *Sched. A.* (119).

[*See also Rev. Stat. c. 105, ss. 45-48, as to preference of purchase given to the person who would have been heir-at-law prior to 1st Jan., 1852.*]

Mortgages  
taken on sale.

**41.** The real representative may take separate mortgages or other securities for such convenient shares or portions of the purchase money as have been directed to be invested as aforesaid, in his own name of office as Surrogate Judge and real representative for the County, and his successors in office, and for such shares as have been directed to be invested in the name of any known owner or party interested of full age, in the name of such owner.

2. Upon such sale being confirmed, the real representative shall deliver such mortgage to the Clerk or Registrar of the Court as the case may be, or deliver or assign the same to the known owner of the full age of twenty-one years, whose share has been ascertained and so invested. 32 V. c. 33, s. 26.

**42.** Where the said notice of the said petition has been published as required by this Act, the order for sale shall state that the said notice has been so published, and that the said sale will bind absent persons, whether known or unknown. 36 V. c. 16, s. 11.

**43.** Before making any order for sale, where the plaintiff desires to bind absent or unknown persons, the Court or Judge shall be satisfied that all persons who are known have been served with notice of the said proceedings, and that the proper publication has taken place as directed by this Act; and the party prosecuting the said proceedings shall produce to the Court or Judge, in addition to all title deeds, an abstract of the title of the lot, certified by the Registrar of the County or other Registration Division in which the lands lie. 36 V. c. 16, s. 7.

**44.** Before making any order for sale, where any creditors have specific liens on the whole estate, or any undivided interest or estate therein of any of the parties, by means of any mortgage or other lien or security sufficient to bind lands according to the law of this Province, the Court or Judge in Chambers shall direct a reference to the Clerk, Deputy Clerk of the Crown, Master or Clerk of the Court, as the case may be, to ascertain and report whether the shares or interests in the premises of the parties in the suit, or any of them, are subject to any and what general lien or incumbrance as aforesaid. 32 V. c. 33, s. 27.

**45.** Such reference may be embodied in the order directing a sale, and the said order may direct payment out of the proceeds of the sale of said lands of any such liens or charges. 36 V. c. 16, s. 5.

**46.** The said Clerk, Deputy Clerk of the Crown, Master or Clerk of the Court, shall forthwith cause a notice to be published once in each week for three weeks, in some paper, if there is one, published in the County or Counties where the lands are situate, or if there is none published therein, then in a paper published in the nearest County thereto, requiring all parties having any lien or incumbrance as aforesaid, on the whole or any part of the estate, to produce to the said Clerk, Deputy Clerk of the Crown, Master or Clerk of the Court, as the case may be, on or before a certain day to be named in such notice, full particulars of all such liens and incumbrances, together with satisfactory evidence of the amount due thereon; and the Clerk, Deputy Clerk of the Crown, Master, or Clerk of the Court, shall immediately thereafter report to the Court

or Judge the names of the creditors, the nature and extent of the incumbrance, the date thereof, and the several amounts appearing to be due thereon; and thereupon the Court or Judge, in the rule or order directing the real representative to partition or sell the lands, shall also make reference to such liens and incumbrances, and define the same; and the said real representative shall, in making such partition, be governed accordingly; and in any rule or order directing the sale of the said lands, or any part thereof, the Court or Judge shall and may authorize and direct the real representative to pay, satisfy and discharge the amounts of such liens or incumbrances so ascertained, with any accrued interest thereon, up to the time of payment thereof, after deducting therefrom the portion of costs, charges and expenses to which the same may be liable. 32 V. c. 33, s. 27

Creditors, etc.,  
may apply  
for payment  
from purchase  
money.

**47.** Any party entitled as creditor as aforesaid or otherwise to a share of the estate, may apply to the Court or a Judge thereof, to order the part of the purchase money which he claims to be paid to him, on affidavit showing the amount truly due on each incumbrance (if any), the owner of such incumbrance and his residence, so far as known to such party, and also on proof of the due service of a notice on the petitioners and parties to the proceedings, and on each other incumbrancer or on their attorneys or agents, of the intention to make the application at least fifteen days previous thereto, such service in any case where not made on the attorney or agent, to be personal, or on a grown-up person at his or their usual or last known place of abode, if residing in this Province, and if residing out of this Province, sixty days previous thereto, or by previously publishing the notice once a week for two calendar months in any weekly paper published in the County or Counties where the estate is situate. 32 V. c. 33, s. 28.

Real represen-  
tative may  
pay creditors  
by order, etc.

**48.** The real representative shall and may, upon due proofs of identity, and upon the amounts thereof being ascertained and proved as aforesaid, upon the order of the Court or Judge in that behalf granted, pay each creditor as aforesaid from and out of the purchase money, the amount of his claim according to the priority thereof respectively, and shall cause the same to be duly discharged of record, first defraying and deducting the expenses and costs out of the moneys payable on the share or shares which were so incumbered; but the proceedings to ascertain the amount of such incumbrances shall not affect or delay the paying over or investing of money to or for any party upon whose estate in the premises there does not appear to be any existing incumbrance. 32 V. c. 33, s. 29.

Tenancy in  
dower or by  
the curtesy.

**49.** Wherever the estate of any tenant in dower or of any tenant by the curtesy or for life to the whole or to any part of the estate, has been admitted by the parties or ascertained by the Court or Judge to be existing at the time of the order for such sale, and the person entitled to such estate has been made

a party to the proceedings, the Court or Judge shall first determine whether such estate ought to be exempted from the sale or whether the same should be sold; and in making such determination, regard shall be had to the interests of all the parties; and if a sale is ordered, including such estate, all the estate and interest of every such tenant shall pass thereby; and no conveyance or release to the purchaser shall be required from such tenant; and the said purchaser, his heirs and assigns, shall hold such premises freed and discharged from all claims by virtue of the estate or interest of any such tenant, whether the same be to any undivided share or to the whole or any part of the premises sold; and the Court or Judge shall direct the payment of such sum in gross out of the purchase money to the person entitled to such dower or estate by the curtesy or for life, as may be deemed, upon the principles applicable to life annuities, a reasonable satisfaction for such estate. 32 V. c. 33, s. 30.

2. Where any married woman is a party to such proceedings as petitioner, if her claim is an inchoate right of dower, then, in case of sale, the Court shall determine the value of such right according to the principles applicable to deferred annuities and survivorships, and shall order the amount of such value to be paid; and the payment thereof as aforesaid shall be a valid and effectual bar to any right or claim of dower. 32 V. c. 33, s. 31.

When married woman a party, value of inchoate right of dower to be determined.

50. The real representative shall give notice of any sale to be made by him for such time and in such manner as he may see fit; and the terms of such sale shall be set out in such notice and made known at the time of the sale; and after the completion thereof, he shall report the same in writing to the Court, with a description of the different parcels of land sold to each purchaser, and the prices at which the same have been sold; and, at the expiration of fifteen days next after the said sale and the due filing of such report, the sales may be approved and confirmed by the Court or a Judge thereof; and an order shall be made directing the real representative to execute deeds pursuant to such sales; and such deeds so executed shall be recorded in the County or other Registration Division in which the lands lie in the same manner as other deeds, and shall be a bar both in Law and Equity against all known parties interested in the premises, and against all unknown parties where notice was published as aforesaid, and against all incumbrancers where the notice hereinbefore mentioned has been given to them, in manner and form aforesaid. 32 V. c. 33, s. 32; 40 V. c. 7, *Sched. A* (120).

Notices of sale.

Confirmation of sale.

Conveyances.

51. Where the notice of the petition has been published as required by this Act, the deed to be executed by the real representative shall set forth the order for sale; and the said deed

Deed.



**Effect of Deed.** shall vest in the purchaser an absolute and indefeasible title to the estates and interests, in the lands partitioned, to which all or any of the parties interested therein as co-tenants with the petitioner, or any one claiming under them or any or either of them, or under the petitioner are entitled, and shall be conclusive evidence that every application, notice, publication, proceeding and act whatsoever which ought to have been given and done previously to the execution of the same, has been given and done by the proper parties. 36 V. c. 16, s. 11; 39 V. c. 7, s. 2, *Sched. B.*

**Apportionment of the costs.**

**52.** The Court or a Judge in Chambers shall apportion the costs of the proceedings on the petition, according to the respective shares and interests of the parties, known or unknown, and shall direct the same to be paid to the petitioners, and such order shall operate as a judgment for such costs, and, on a copy thereof being filed in the Registry Office of the County or other Registration Division in which the lands lie, shall be a charge for such proportion against the shares representing such proportion; and execution may issue thereon as in ordinary cases of costs; and such share or interest may be sold thereon, and a valid title on such sale be given to the purchaser thereof, as in the case of sales by Sheriffs on execution; and, if judgment is rendered against the petitioners for any cause, the Court or Judge aforesaid shall adjudge costs against them, to be recovered as in personal actions. 32 V. c. 33, s. 36.

**Application of proceeds.**

**53.** The proceeds of such sale, after deducting all costs, shall be divided among the parties whose rights and interests have been sold, in proportion to their respective rights in the premises; and the shares of such as are of full age shall be paid to them by the real representative, and, in the case of infants, unknown or absent parties, shall be invested for them in the name of the real representative and his successors in office, until by law fully claimed by them or their legal representatives; and the real representative may, in his discretion, require all or any of the parties, before they receive any share of the moneys arising from such sale, to give security to his satisfaction that they will refund the said shares with interest thereon in case it should thereafter appear that such parties were not entitled thereto. 32 V. c. 33, s. 33.

**How securities taken.**

**54.** All securities shall be taken in the name of the real representative in his own name and name of office as Surrogate Judge and real representative for such County, and his successors in office, except when directed to be taken in the name of any known party; and shall be delivered to and kept by the real representative, who shall receive the interest and principal thereon, and shall apply or invest the same as the Court or a Judge thereof may direct, and the real representative shall, in the month of January in each year, render to the Court an account in writing under oath of all moneys received by him, and of the application thereof. 32 V. c. 33, s. 34.

2. The Court or Judge may, if it or he thinks fit, direct the interest, or an adequate portion thereof, accruing from time to time on any minor's share, to be applied towards his maintenance. 40 V. c. 7, *Sched. A* (121).

**55.** All investments of moneys received from any sales under this Act shall be made in Dominion stock, or other public security of the Dominion of Canada, or of this Province. 32 V. c. 33, s. 35. How moneys invested.

**56.** All moneys which may be from time to time payable in respect of sales under this Act, or of securities standing in the name of the Surrogate Judge, shall be paid into some incorporated bank designated for this purpose, from time to time, by order of the Lieutenant-Governor in Council; or where there is no such bank, then into some incorporated bank in which public money of the Province is then being deposited. Moneys, how to be paid in or out.

2. The money shall be so paid in to the credit of the matter in which the payment is made, with the privity of the Clerk of the County Court, and in no other manner; and such money shall only be withdrawn or reinvested on the order of the Court or a Judge thereof, with the privity of the Clerk of the Court. Procedure. Withdrawal.

3. The Clerk shall keep a book or books containing an account of all moneys so paid in, and of the withdrawal thereof; and shall prepare in the month of January in every year a statement of all moneys so paid in and withdrawn, or reinvested respectively, and a statement of the condition of the various accounts upon the thirty-first day of the preceding December, and shall transmit to the Provincial Secretary and to the real representative, a copy of such statement, with a declaration thereto annexed made before a Justice of the Peace or Commissioner for taking affidavits in the form following:— Clerk to keep books and render statements.

I hereby solemnly declare that the annexed statement is a full and true statement of the moneys paid into the Court, to the credit of the real representative of the County of \_\_\_\_\_, under "The Partition Act," during the year 18\_\_\_\_, and that it correctly shows the state of the various accounts therein mentioned upon the thirty-first day of December last. Verification of statement by Clerk.

(Signature)

A. B.

Clerk.

Subscribed and declared before me, at \_\_\_\_\_, this \_\_\_\_\_ day of January, 18\_\_\_\_.

C. D.,

Commissioner for taking affidavits, or  
Justice of the Peace.

4. The book or books so to be kept shall be open for inspection within office hours; and the Clerk shall give a certificate of the state of any account or an extract therefrom at the Books to be open for inspection.

Fees for extracts, &c.

desire of any party interested, or his attorney or solicitor on payment to the Clerk of the sum of twenty cents for such inspection or certificate and the sum of ten cents per folio for such extract. 36 V. c. 16, s. 18; 39 V. c. 7, s. 7; 40 V. c. 7, *Sched. A* (122).

Investments before 23 Jan., 1869, declared valid.

**57.** All investments made prior to the twenty-third day of January, eighteen hundred and sixty-nine, on mortgage of real estate, and all acts and proceedings before said day done and performed, by virtue of the Partition Acts then in force, by any real representative, shall be and the same are hereby declared valid and effectual. 32 V. c. 33, s. 39.

Releases and discharges.

2. The successors in office, or any of them, of any deceased or other real representative, or any real representative for the time being, shall be and each of them is hereby duly empowered, upon payment having been made to any predecessor or himself in full of any sum or sums of money secured by mortgage, by virtue of this or any former Partition Act, to any predecessor or deceased predecessor in his lifetime, or to any successor or successors in office as such Surrogate Judge and real representative, or to himself, to execute and grant all necessary releases and discharges of the same in manner and form provided by "*The Registry Act*." 32 V. c. 33, s. 39.

Rev. Stat. c. 111.

#### MISCELLANEOUS PROVISIONS.

Junior or acting Judge of County Court to have jurisdiction.

**58.** The Judge or Junior or acting Judge of the County Court for the time being shall, in case of the decease or absence of the proper Surrogate Judge, be and he is hereby vested, for the time being, with all the functions, powers and authorities for the County, of the person hereby appointed the real representative, and shall perform the duties thereof till the appointment of or return of the Surrogate Judge. 32 V. c. 33, s. 39.

Deaths, transmission, or change of interest.

**59.** Proceedings under this Act shall not abate or be suspended by any death, or transmission or change of interest, but in any such event, if known, the Court or Judge may require notices to be given to persons becoming interested, or may make such order for carrying on the proceedings, or otherwise, in relation thereto, as may be just. 36 V. c. 16, s. 10.

Amendment of proceedings.

**60.** The Court or a Judge shall have the same powers of amendment of all or any of the proceedings under this Act, as are possessed by the Court or a Judge in ordinary suits and proceedings pending in the said Court. 36 V. c. 16, s. 17.

Adding parties.

**61.** In case it at any time during the course of the proceedings appears that any person not already a party to the suit has any interest in the said land, the Judge may, upon such terms as to him seem just, order such person to be named as a party and served with notice of the proceedings, and from the time of the service of such order, the said party

shall be bound by the said proceedings in the same manner as if he had actually been made a party to the same. 36 V. c. 16, s. 8.

**62.** A Judge in Chambers shall have equal power and jurisdiction with the full Court, in all proceedings under this Act, as fully as if specially named therein, except where the word "Court" is in this Act used alone. 32 V. c. 33, s. 40.

Powers of Judge in chambers.

**63.** All affidavits, rules, orders, reports and all other papers and documents filed with any Deputy Clerk of the Crown or Deputy Registrar in Chancery, during the progress of any proceeding under this Act, shall be by him immediately thereafter handed over to the Clerk of the Crown or Clerk of Records any Writs in Chancery or other proper officer of the Court in which the petition has been filed, as the case may be, to be preserved and safely kept as muniments of title. 32 V. c. 33, s. 41; 40 V. c. 7, *Sched. A.* (123).

Where affidavits, etc., to be deposited, etc.

**64.** In the month of January in each year the real representative, the Clerk of Records and Writs in Chancery, the Clerk of the Crown or officer of any Court having in any case the custody of any moneys, bonds, mortgages, securities or investments, arising from the sales of such estates for the benefit of any unknown, absent, infant or lunatic parties, where no claim has been made on their behalf for any interest or principal of such investments during the preceding year, shall cause to be published in the *Ontario Gazette* and any weekly or daily paper published in the County in which the lands or any part thereof are situate, or if no such paper is published therein then in a daily or weekly paper published in the next adjoining or nearest County where such paper is published, weekly for the period of four weeks, a statement of the securities or investments remaining unclaimed, showing the name of the intestate party, the amount unclaimed, and the property from which the claim has arisen; and such statement shall be verified by the real representative, Clerk, or other officer aforesaid under oath; and a copy thereof shall be filed among the records of the Court. 32 V. c. 33, s. 42.

An account of unclaimed moneys to be published yearly.

**65.** The Judges of the Superior Courts of Law and the Court of Chancery, respectively, acting under the forty-fifth and following sections of "*The Administration of Justice Act*," shall make such tariff of fees, Rules and Orders for the proceedings on petitions under this Act at Law and in Equity as they may deem expedient and advisable. 32 V. c. 33, s. 45.

Rules and orders.

Rev. Stat. c. 49, ss. 45-50.



## CHAPTER 102,

## An Act respecting Short Forms of Conveyances.

---

Interpretation, s. 1.	Appurtenances included in deeds,
Short form of deed, s. 2.	s. 4.
Deeds failing to take effect under this Act to be valid, s. 3.	Costs of deeds, s. 5.
	Schedules, s. 6.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Construction  
of words.

1. Wherever the words following occur in this Act, or in the Schedules thereto, they shall be construed in the manner hereinafter mentioned, unless there is something in the subject or context repugnant to such construction,

“Lands.

(1) “Lands” shall extend to all freehold tenements and hereditaments, whether corporeal or incorporeal, or any undivided part or share therein, respectively; and

“Party.”

(2) “Party” shall mean and include any body politic or corporate or collegiate, as well as an individual. C. S. U. C. c. 91, s. 4.

Where words  
of column 1 of  
Schedule B are  
employed the  
deed to have  
the same effect  
as if the words  
in column 2  
were inserted.

2. Where a deed made according to the form set forth in Schedule A, annexed to this Act, or any other deed expressed to be made in pursuance of this Act, or referring thereto, contains any of the forms of words contained in column one of Schedule B, hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect, and be construed as if it contained the form of words contained in column two of said Schedule B, and distinguished by the same number as is annexed to the form of words used in the deed; but it shall not be necessary, in any such deed, to insert any such number. C. S. U. C. c. 91, s. 1.

Deeds failing  
to take effect  
under this Act  
to be as valid  
as if Act not  
made.

3. Any deed or part of a deed which fails to take effect by virtue of this Act, shall, nevertheless, be as effectual to bind the parties thereto, so far as the rules of Law and Equity will permit, as if this Act had not been made. C. S. U. C. c. 91, s. 2.

Deed to  
include all  
houses, etc.,  
and the

4. Every such deed, unless an exception is specially made therein, shall be held and construed to include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, com-

mons, trees, woods, underwoods, mounds, fences, hedges, reversion, and all the estate, etc. ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever, to the lands therein comprised, belonging or in anywise appertaining, or with the same demised, held, used, occupied and enjoyed, or taken or known as part or parcel thereof: and if the same purports to convey an estate in fee, also the reversion or reversions, remainder and remainders, yearly and other rents, issues and profits of the same lands, and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, both at Law and in Equity, of the grantor, in, to, out of, or upon the same lands, and every part and parcel thereof, with their and every of their appurtenances. C. S. U. C. c. 91, s. 3.

5. In taxing any bill for preparing and executing any deed under this Act, the Taxing Officer, in estimating the proper sum to be charged therefor, shall consider, not the length of such deed, but the skill and labour employed and responsibility incurred in the preparation thereof. Remuneration for deeds under the Act not to be by length only. C. S. U. C. c. 91, s. 5.

6. The Schedules hereto, and the directions and forms therein contained, shall be deemed parts of this Act. Schedules, etc., to form part of Act. C. S. U. C. c. 91, s. 6.

## SCHEDULE "A."

(Section 2.)

### FORM OF DEED.

This Indenture, made the                      day of                      , one thousand eight hundred and                      , in pursuance of *The Act respecting Short Forms of Conveyances*, between *(here insert names of parties and recitals, if any,)* Witnesseth, that in consideration of                      dollars, of lawful money of Canada, now paid by the said (grantee or grantees) to the said (grantor or grantors) (the receipt whereof is hereby by him (or them) acknowledged,) he (or they) the said (grantor or grantors) doth (or do) grant unto the said (grantee or grantees) his (or their) heirs and assigns for ever, all, &c. *(parcels.)*

*(Here insert covenants, or any other provisions.)*

In witness whereof, the said parties hereto have hereunto set their hands and seals.

## SCHEDULE "B."

(Section 2.)

### DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

1. Parties who use any of the forms in the first column of this Schedule, may substitute for the words "Covenantor" or "Covenantee," or "Releasor" or "Releasee," "Grantor" or "Grantee," any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may introduce into, or annex to, any of the forms in the first column, any express exceptions from, or other express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

4. Such parties may add the name or other designation of any person or persons, or class or classes of persons, or any other words, at the end of form two, of the first column, so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons, or of all persons whomsoever; and in every such case the covenants two, three and four, or such of them as may be employed in such deed, shall be taken to extend to the acts of the person or persons, class or classes of persons, so named.

---

FORMS OF COVENANTS.

## COLUMN ONE.

## COLUMN TWO.

1. The said (*covenantor*) covenants with the said (*covenantee*.)

1. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, with and to the said covenantee, his heirs and assigns, in manner following, that is to say :

2. That he has the right to convey the said lands to the said (*covenantee*) notwithstanding any act of the said (*covenantor*.)

2. That for and notwithstanding any act, deed, matter or thing by the said covenantor done, executed, committed, or knowingly or wilfully permitted or suffered to the contrary, he, the said covenantor, now hath in himself good right, full power, and absolute authority to convey the said lands, and other the premises hereby conveyed, or intended so to be, with their and every of their appurtenances, unto the said covenantee, in manner aforesaid, and according to the true intent of these presents.

3. And that the said (*covenantee*) shall have quiet possession of the said lands.

3. And that it shall be lawful for the said covenantee, his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said land and premises hereby conveyed, or intended so to be, with their and every of their appurtenances; and to have, receive and take the rents, issues and profits thereof, and of every part thereof, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him the said covenantor, or his heirs, or any person claiming, or to claim, by, from, under or in trust for him, them or any of them.

4. Free from all incumbrances.

4. And that free and clear, and freely and absolutely acquitted, exonerated and for ever discharged, or otherwise by the said covenantor or his heirs well and sufficiently saved, kept harmless and indemnified of, from and against any

## COLUMN ONE.

5. And the said  
(*covenantor*) cove-  
nants with the said  
(*covenantee*) that he  
will execute such  
further assurances of  
the said lands as may  
be requisite.

6. And the said  
(*covenantor*) cove-  
nants with the said  
(*covenantee*) that he  
will produce the  
title deeds enume-  
rated hereunder, and  
allow copies to be  
made of them, at  
the expense of the  
said (*covenantee*.)

## COLUMN TWO.

and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble and incumbrance whatsoever, made, executed, occasioned or suffered by the said covenantor or his heirs, or by any person claiming, or to claim, by, from, under or in trust for him, them or any of them.

5. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise, and agree with and to the said covenantee, his heirs and assigns, that he the said covenantor, his heirs, executors and administrators, and all and every other person whosoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever, either at law or in equity, in, to, or out of the said lands and premises hereby conveyed, or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said covenantee, his heirs or assigns, make, do, execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices, conveyances and assurances in the law whatsoever, for the better, more perfectly, and absolutely conveying and assuring the said lands and premises hereby conveyed, or intended so to be, and every part thereof, with their appurtenances, unto the said covenantee, his heirs and assigns, in manner aforesaid as by the said covenantee, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof, to go or travel from his usual place of abode.

6. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said covenantee, his heirs and assigns, that the said covenantor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request, costs and charges of the said covenantee, his heirs or assigns, or his or their attorney, solicitor, agent or counsel, at any trial or hearing in any action or suit at law or in equity, or other judicature or otherwise, as occasion shall require, produce all and every or any deed, instrument or writing hereunder written, for the manifesta-



## COLUMN ONE.

## COLUMN TWO.

tion, defence and support of the estate, title and possession of the said covenantee, his heirs and assigns, in or to the said lands and premises hereby conveyed, or intended so to be, and at the like request, costs and charges, shall and will make and deliver, or cause to be made and delivered, true and attested or other copies or abstracts of the same deeds, instruments and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds, by the said covenantee, his heirs and assigns, or such person as he or they shall for that purpose direct and appoint.

7. And the said (covenantor) covenants with the said (covenantee) that he has done no act to incumber the said lands.

8. And the said (releasor) releases to the said (releasee) all his claims upon the said lands.

9. And the said (A. B.) wife of the said (grantor) hereby bars her dower in the said lands.

7. And the said covenantor, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said covenantee, his heirs and assigns, that he hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered any act, deed, matter or thing whatsoever, whereby or by means whereof the said lands and premises hereby conveyed, or intended so to be, or any part or parcel thereof are, is, or shall or may be in anywise impeached, charged, affected, or incumbered in title, estate or otherwise howsoever.

8. And the said releasor hath released, remised and for ever quitted claim, and by these presents doth release, remise and for ever quit claim, unto the said releasee, his heirs and assigns, all and all manner of right, title, interest, claim and demand whatsoever, both at law and in equity, in, to and out of the said lands and premises hereby granted, or intended so to be, and every part and parcel thereof, so as that neither he nor his heirs, executors, administrators or assigns shall nor may, at any time hereafter, have, claim, pretend to, challenge or demand the said lands and premises or any part thereof, in any manner howsoever, but the said releasee, his heirs and assigns, and the same lands and premises shall from henceforth for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor might or could have upon him in respect of the said lands, or upon the said lands.

9. And the said (A. B.) wife of the said (grantor) hereby bars her dower in the said lands.

9. And the said (A. B.) wife of the said grantor, for and in consideration of the sum of dollars of lawful money of Canada, to her in hand paid by the said grantee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said grantee, his heirs and assigns, all her dower and right and title which, in the event of her surviving her said husband, she might or would have to dower, in, to or out of the lands and premises hereby conveyed or intended so to be.

## An Act respecting Short Forms of Leases.

Appurtenances included in leases,  
s. 3.

Deed to in-  
clude  
houses, etc.

, in the year of  
, in pursuance

of *The Act respecting Short Forms of Leases*, between  
 the first part, and \_\_\_\_\_, of the second part, Witnesseth, that  
 in consideration of the rents, covenants and agreements, hereinafter re-  
 served and contained on the part of the said party (*or parties*) of the  
 second part, his (*or their*) executors, administrators and assigns, to be  
 paid, observed and performed, he (*or they*) the said party (*or parties*) of  
 the first part hath (*or have*) demised and leased, and by these presents do  
 (*or doth*) demise and lease unto the said party (*or parties*) of the second  
 part, his (*or their*) executors, administrators and assigns, all that mes-  
 suage or tenement situate (*or all that parcel or tract of land situate*),  
 lying and being (*here insert a description of the premises with sufficient*  
*certainty.*)

To have and to hold the said demised premises for and during the term  
 of \_\_\_\_\_, to be computed from the \_\_\_\_\_ day of \_\_\_\_\_,  
 one thousand eight hundred and \_\_\_\_\_, and from thenceforth next  
 ensuing and fully to be complete and ended.

Yielding and paying therefor yearly and every year during the said term  
 hereby granted unto the said party (*or parties*) of the first part, his (*or*  
*their*) heirs, executors, administrators or assigns, the sum of \_\_\_\_\_  
 to be payable on the following days and times, that is to say (*on, &c.*),  
 the first of such payments to become due and be made on the  
 day of \_\_\_\_\_ next.

## SCHEDULE "B."

### (Section 1.)

#### DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

1. Parties who use any of the forms in the first column of this Schedule,  
 may substitute for the words "Lessee" or "Lessor" any name or names  
 and in every such case corresponding substitutions shall be taken to be  
 made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine,  
 or the plural number for the singular, in the forms in the first column of  
 this Schedule, and corresponding changes shall be taken to be made in the  
 corresponding forms in the second column.

3. Such parties may introduce into or annex to any of the forms in the  
 first column any express exceptions from or express qualifications thereof  
 respectively, and the like exceptions or qualifications shall be taken to be  
 made from or in the corresponding forms in the second column.

4. Where the premises demised are of freehold tenure, the covenants 1  
 to 8 shall be taken to be made with, and the proviso 9 to apply to the  
 heirs and assigns of the lessor; and where the premises demised are  
 of leasehold tenure, the covenants and proviso shall be taken to be made  
 with, and apply to the lessor, his executors, administrators and assigns.

#### FORMS OF COVENANTS.

##### COLUMN ONE.

1. That the said  
 (*lessee*) covenants  
 with the said (*lessor*)  
 to pay rent.

##### COLUMN TWO.

1. And the said lessee doth hereby for himself,  
 his heirs, executors, administrators and assigns,  
 covenant with the said lessor that he, the said  
 lessee, his executors, administrators and assigns,  
 will, during the said term, pay unto the said  
 lessor the rent hereby reserved, in manner herein-  
 before mentioned, without any deduction what-  
 soever.

## COLUMN ONE.

## COLUMN TWO.

2. And to pay taxes. 2. And also will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof.
3. And to repair. 3. And also will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said term shall be erected and made, when, where, and so often as need shall be.
4. And to keep up fences. 4. And also will, from time to time, during the said term, keep up the fences and walls of or belonging to the said premises, and make anew any parts thereof that may require to be new-made in a good and husband-like manner and at proper seasons of the year.
5. And not to cut down timber. 5. And also will not at any time during the said term hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs, or firewood, or for the purpose of clearance as herein set forth.
6. And that the said (*lessor*) may enter and view state of repair, and that the said (*lessee*) will repair according to notice. 6. And it is hereby agreed that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the said demised premises to examine the condition thereof; and further, that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators and assigns will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly.
7. And will not assign or sub-let without leave. 7. And also that the lessee shall not, nor will during the said term, assign, transfer or set over, or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, set over or sub-let unto any person or persons whomsoever without the consent in writing of the lessor, his heirs or assigns, first had and obtained.
8. And that he will leave the premises in good repair. 8. And further, the lessee will, at the expiration, or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised, with the appurtenances, together with all buildings, erections and fixtures thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire only excepted.



## COLUMN ONE.

## COLUMN TWO.

9. Proviso for re-entry by the said (*lessor*) on non-payment of rent or non-performance of covenants.

10. The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.

9. Provided always, and it is hereby expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, his executors, administrators or assigns, then and in either of such cases it shall be lawful for the lessor at any time hereafter, into and upon the said demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess and enjoy, as of his or their former estate; anything hereinafter contained to the contrary notwithstanding.

10. And the lessor doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the lessee, his executors, administrators and assigns, that he and they paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, his heirs, executors, administrators and assigns, or any other person or persons lawfully claiming by, from or under him, them or any of them.

## CHAPTER 104.

## An Act respecting Short Forms of Mortgages.

Interpretation, s. 1.

Short form of Mortgage, s. 2.

Mortgages failing to take effect under this Act to be valid, s. 3.

Appurtenances included in a Mortgage, s. 4.

Costs of Mortgages, s. 5.

Schedules, s. 6.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Construction of words

1. Wherever the words following occur in this Act or in the Schedules thereto, they shall be construed in the manner hereinafter mentioned, unless there is something in the subject or context repugnant to such construction;

“Lands,”

(1) “Lands” shall extend to all freehold tenements and hereditaments, whether corporeal or incorporeal, or any undivided part or share therein respectively; and

(2) "Party" shall mean and include any body politic, corporate, or collegiate, as well as an individual. 27-8 V. c. 31, s. 4.

2. Where a mortgage of real property in Ontario, made according to the form set forth in Schedule A, annexed to this Act, or any other such mortgage expressed to be made in pursuance of this Act, or referring thereto, contains any of the forms of words contained in column one of Schedule B to this Act, and distinguished by any number therein, such mortgage shall be taken to have the same effect, and be construed as if it contained the form of words contained in column two of said Schedule B, and distinguished by the same number as is annexed to the form of words used in such mortgage; but it shall not be necessary in any such mortgage to insert any such number. 27-8 V. c. 31, s. 1; 29 V. c. 27.

Where words of column one of Schedule B are employed, the mortgage to have the same effect as if the words in column two were inserted.

3. Any such mortgage or part of such mortgage which fails to take effect by virtue of this Act, shall nevertheless be as effectual to bind the parties thereto, so far as the rules of Law and Equity will permit, as if this Act had not been made. 27-8 V. c. 31, s. 2.

Mortgages not taking effect under this Act how far valid.

4. Every such mortgage, unless an exception is specially made therein, shall be held and construed to include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, under-woods, mounds, fences, hedges, ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever, to the lands therein comprised belonging, or in anywise appertaining, or with the same demised, held, used, occupied and enjoyed, or taken or known as part or parcel thereof, and if the same purports to convey an estate in fee, also the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of the same lands, and of every part and parcel thereof; and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever at Law and in Equity of the grantor in, to, out of or upon the same lands and every part and parcel thereof, with their and every of their appurtenances, subject always to the reservations, limitations, provisoes and conditions contained in the grant of such lands from the Crown. 27-8 V. c. 31, s. 3.

Mortgage to include all houses, &c., and the reversion and all the estate, etc., of the grantor.

5. In taxing any bill for preparing and executing any mortgage under this Act, the Taxing Officer, in estimating the proper sum to be charged therefor, shall consider not the length of such mortgage, but the skill and labour employed, and responsibility incurred in the preparation thereof. 27-8 V. c. 31, s. 5.

Remuneration for mortgages under this Act not to be taxed according to length only.

6. The Schedules hereto, and the directions and forms therein contained, shall be deemed parts of this Act. 27-8 V. c. 31, s. 6

Schedules, &c., to form part of Act.

## SCHEDULE "A."

(Section 2).

## FORM OF MORTGAGE.

This Indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, in pursuance of *The Act respecting Short Forms of Mortgages*, between (*here insert the names of parties and recitals, if any*), witnesseth, that in consideration of \_\_\_\_\_ of lawful money of Canada, now paid by the said (mortgagee or mortgagees) to the said (mortgagor or mortgagors), the receipt whereof is hereby acknowledged, the said (mortgagor or mortgagors) doth (or do) grant and mortgage unto the said (mortgagee or mortgagees), his (her or their) heirs and assigns for ever, all (*parcels*).

(*Here insert provisoes, covenants or other provisions.*)

In witness whereof the said parties hereto have hereunto set their hands and seals.

## SCHEDULE "B."

(Section 2).

## DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

1. Parties who use any of the forms in the first column of this Schedule, may substitute for the words "Mortgagor" or "Mortgagors," or "Mortgagee" or "Mortgagees," any name or names; and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column of this Schedule; and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may introduce into, or annex to any of the forms in the first column, any express exceptions from or other express qualifications thereof respectively; and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

## FORMS OF COVENANTS, &amp;c.

## COLUMN ONE.

## COLUMN TWO.

1. And the said (A. B.) wife of the said mortgagor hereby bars her dower in the said lands. . .

1. And the said (A. B.) wife of the said mortgagor, for and in consideration of the sum of \_\_\_\_\_ of lawful money of Canada, to her in hand paid by the said mortgagee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said mortgagee, his heirs and assigns, all her dower, and right and title which, in the event of her surviving her said husband, she might or would have to dower, in, to, or out of the lands and premises hereby conveyed or intended so to be.

2. Provided: This mortgage to be void on payment of (*amount of princi-*

2. Provided always, and these presents are upon this express condition, that if the said mortgagor, his heirs, executors, administrators or assigns, or any of them, do and shall well and truly pay or cause to be paid unto the said mortgagee,

## COLUMN ONE.

## COLUMN TWO.

*pal money*) of law- his executors, administrators or assigns, the just  
ful money of Cana- and full sum of (*amount of principal money*) of  
da, with interest at lawful money of Canada, with interest thereon, at  
(*rate of interest*) per the rate of (*rate of interest*) per cent. per annum,  
cent. as follows: that is to say (*terms of payment of principal and*  
(*terms of payment of interest*), without any deduction, defalcation or  
*principal and interest*) and taxes and abatement out of the same for or in respect of any  
performance of sta- ready rated, charged, assessed or imposed, or  
tute labour. hereafter to be rated, charged, assessed or im-  
posed by authority of Parliament or of the Legis-  
lature, or otherwise howsoever, on the said lands  
and tenements, hereditaments and premises, with  
the appurtenances, or on the said mortgagee, his  
heirs, executors, administrators or assigns, in re-  
spect of the said premises, or of the said money or  
interest, or any other matter or thing relating to  
these presents, and until such default as afore-  
said shall and will well and truly pay, do and  
perform or cause or procure to be paid, done and  
performed, all matters and things in this proviso  
hereinbefore set forth, then these presents and  
everything in the same contained shall be abso-  
lutely null and void.

3. The said mort- 3. And the said mortgagor doth hereby, for  
gagor covenants with himself, his heirs, executors and administrators,  
the said mortgagee. covenant, promise and agree to and with the said  
mortgagee, his heirs and assigns, in manner fol-  
lowing, that is to say :

4. That the mort- 4. That the said mortgagor, his heirs, execu-  
gagor will pay the tors, administrators or some or one of them shall  
mortgage money and and will well and truly pay or cause to be paid  
interest, and observe unto the said mortgagee, his heirs, executors, ad-  
the above proviso. ministrators or assigns, the said sum of money in  
the above proviso mentioned, with interest for  
the same as aforesaid, at the days and times and in  
the manner above limited for payment thereof,  
and shall and will in everything well, faithfully  
and truly do, observe, perform, fulfil and keep  
all and singular the provisions, agreements and  
stipulations in the said above proviso particularly  
set forth, according to the true intent and mean-  
ing of these presents, and of the said above pro-  
viso.

5. That the mort- 5. And also, that the said mortgagor, at the  
gagor has a good ti- time of the sealing and delivery hereof, is, and  
tle in fee simple to stands solely, rightfully and lawfully seised of a  
the said lands. good, sure, perfect, absolute and indefeasible es-  
tate of inheritance, in fee simple, of and in the  
lands, tenements, hereditaments and all and sin-  
gular other the premises hereinbefore described,  
with their and every of their appurtenances, and  
of and in every part and parcel thereof, without  
any manner of trusts, reservations, limitations,  
provisoes or conditions, except those contained in  
the original grant thereof from the Crown or any



## COLUMN ONE.

## COLUMN TWO.

other matter or thing to alter, charge, change, incur or defeat the same.

6. And that he has the right to convey the said lands to the said mortgagee.

6. And also, that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances unto the said mortgagee, his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents.

7. And that on default the mortgagee shall have quiet possession of the said lands.

7. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then, and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of him the said mortgagor, his heirs or assigns or any other person or persons whomsoever.

8. Free from all incumbrances.

8. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments and premises or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner of other charges or incumbrances whatsoever.

9. And that the said mortgagor will execute such further assurances of the said lands as may be requisite.

9. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned or the interest thereof, or any part of such money or interest, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then and in every such case the said mortgagor, his heirs and assigns and all and every other person or persons whosoever having, or lawfully claiming, or who shall or may have or lawfully claim, any estate, right, title, interest or trust of, in, to or out of the lands,

## COLUMN ONE.

## COLUMN TWO.

tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with the appurtenances or any part thereof, by, from, under or in trust for him the said mortgagor, shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs and assigns, make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the said lands, tenements, hereditaments and premises, with the appurtenances, unto the said mortgagee, his heirs and assigns, as by the said mortgagee, his heirs and assigns, or his or their counsel learned in the law, shall or may be lawfully and reasonably devised, advised or required, so as no person who shall be required to make or execute such assurances shall be compelled, for the making or executing thereof, to go or travel from his usual place of abode.

10. And also that the said mortgagor will produce the title deeds enumerated hereunder, and allow copies to be made at the expense of the mortgagee.

10. And also, that the said mortgagor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request and proper costs and charges in the law of the said mortgagee, his heirs or assigns, at any trial or hearing in any action or suit at law or in equity or other judicature, or otherwise as occasion shall require, produce all, every or any deed, instrument or writing hereunder written for the manifestation, defence and support of the estate, title and possession of the said mortgagee, his heirs and assigns, of, in, to or out of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, and at the like request, costs and charges shall and will make and deliver, or cause or procure to be made and delivered, unto the said mortgagee, his heirs and assigns, true and attested or other copies or abstracts of the same deeds, instruments and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds by the said mortgagee, his heirs and assigns.

11. And that the said mortgagor has done no act to incumber the said lands.

11. And also that the said mortgagor hath not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or incumbered in title, estate or otherwise howsoever.

## COLUMN ONE.

## COLUMN TWO.

12. And that the said mortgagor will insure the buildings on the said lands to the amount of not less than currency.

12. And also that the said mortgagor or his heirs shall and will forthwith insure, unless already insured, and during the continuance of this security keep insured against loss or damage by fire, in such proportions upon each building as may be required by the said mortgagee, his heirs or assigns, the messuages and buildings erected on the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, in the sum of of lawful money of Canada, at the least, in some insurance office to be approved of by the said mortgagee, his heirs or assigns, and pay all premiums and sums of money necessary for such purpose, as the same shall become due, and will on demand assign, transfer and deliver over unto the said mortgagee, his heirs, executors, administrators or assigns, the policy or policies of assurance, receipt or receipts thereto appertaining; and if the said mortgagee, his heirs or assigns, shall pay any premiums or sums of money for insurance of the said premises or any part thereof, the amount of such payment shall be added to the debt hereby secured, and shall bear interest at the same rate from the time of such payments, and shall be payable at the time appointed for the then next ensuing payment of interest on the said debt.

13. And the said mortgagor doth release to the said mortgagee all his claims upon the said lands subject to the said proviso.

13. And the said mortgagor hath released, remised and for ever quitted claim, and by these presents doth release, remise, and for ever quit claim unto the said mortgagee, his heirs and assigns, all and all manner of right, title, interest, claim and demand whatsoever, both at law and in equity, of, unto and out of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, and every part and parcel thereof, so as that neither the said mortgagor, his heirs, executors, administrators or assigns, shall or may at any time hereafter have, claim, pretend to, challenge or demand the said lands, tenements, hereditaments and premises, or any part thereof, in any manner howsoever, subject always to the said above proviso; but the said mortgagee, his heirs or assigns, and the said lands, tenements, hereditaments and premises, subject as aforesaid, shall from henceforth for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said mortgagor, his heirs or assigns, might or could have upon the said mortgagee, his heirs or assigns, in respect of the said lands, tenements, hereditaments and premises, or upon the said lands, tenements, hereditaments and premises.

14. Provided, that the said mortgagee on default of pay-

14. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors or administrators, shall make default in

## COLUMN ONE.

## COLUMN TWO.

ment for  
months, may on  
notice enter  
on and lease or sell  
the said lands.

any payment of the said money or interest or any part of either of the same, according to the true intent and meaning of these presents, and of the proviso in that behalf hereinbefore contained, and calendar months shall have thereafter elapsed without such payment being made (of which default, as also of the continuance of the said principal money and interest, or some part thereof, on this security, the production of these presents shall be conclusive evidence), it shall and may be lawful to and for the said mortgagee, his heirs or assigns, after giving written notice to the said mortgagor, his heirs or assigns, of his intention in that behalf, either personally or at his or their usual or last place of residence within this Province not less than previous, without any further consent or concurrence of the said mortgagor, his heirs or assigns, to enter into possession of the said lands, tenements, hereditaments and premises hereby conveyed, or mentioned or intended so to be, and to receive and take the rents, issues and profits thereof, and whether in or out of possession of the same, to make any lease or leases thereof, or of any part thereof as he shall think fit, and also to sell and absolutely dispose of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, or any part or parts thereof, with the appurtenances, by public auction or private contract, or partly by public auction and partly by private contract, as to him shall seem meet, and to convey and assure the same when so sold unto the purchaser or purchasers thereof, his heirs and assigns, or as he, she or they shall direct and appoint, and to execute and do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid, and the said mortgagee shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid, unless the same shall happen by reason of his wilful neglect or default; and it is hereby further agreed between the parties to these presents, that, until such sale or sales shall be made as aforesaid, the said mortgagee, his heirs, executors, administrators, or assigns shall and will stand and be possessed of and interested in the rents and profits of the said lands, tenements, hereditaments and premises, in case he shall take possession of the same on any default as aforesaid, and after such sale or sales shall stand and be possessed of and interested in the moneys to arise and be produced by such sale or sales, or which shall be received by the mortgagee, his heirs or assigns, by reason of any insurance upon the said premises or any part thereof, upon trust in the first place to pay and satisfy the costs and charges of preparing for and making sales, leases and conveyances as aforesaid, and all other costs and charges, damages and expenses which the said mortgagee, his heirs, executors, administrators or assigns, shall bear, sustain, or be put to for taxes, rent, insurances



## COLUMN ONE.

## COLUMN TWO.

and repairs, and all other costs and charges which may be incurred in and about the execution of any of the trusts in him hereby reposed, and in the next place to pay and satisfy the principal sum of money and interest hereby secured or mentioned or intended so to be, or so much thereof as shall remain due and unsatisfied up to and inclusive of the day whereon the said principal sum shall be paid and satisfied; and after full payment and satisfaction of all such sums of money and interest as aforesaid, upon this further trust that the said mortgagee, his heirs, executors, administrators or assigns, do and shall pay the surplus, if any, to the said mortgagor, his executors, administrators or assigns, or as he shall direct and appoint, and shall also, in such event, at the request, costs and charges in the law of the said mortgagor, his heirs or assigns, convey and assure unto the said mortgagor, his heirs or assigns, or to such person or persons as he shall direct and appoint, all such parts of the said lands, tenements, hereditaments and premises as shall remain unsold for the purposes aforesaid, freed and absolutely discharged of and from all estate, lien, charge and incumbrance whatsoever by the said mortgagee, his heirs or assigns, in the meantime, so as no person who shall be required to make or execute any such assurances, shall be compelled for the making thereof to go or travel from his usual place of abode; Provided always, and it is hereby further declared and agreed by and between the parties to these presents, that notwithstanding the power of sale and other the powers and provisions contained in these presents, the said mortgagee, his heirs or assigns, shall have and be entitled to his right of foreclosure of the equity of redemption of the said mortgagor, his heirs and assigns in the said lands, tenements, hereditaments and premises as fully and effectually as he might have exercised and enjoyed the same in case the power of sale, and the other former provisos and trusts incident thereto had not been herein contained.

15. Provided that the mortgagee may distrain for arrears of interest.

15. And it is further covenanted, declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors or administrators, shall make default in payment of any part of the said interest at any of the days or times hereinbefore limited for the payment thereof, it shall and may be lawful for the said mortgagee, his heirs or assigns, to distrain therefor upon the said lands, tenements, hereditaments and premises, or any part thereof, and, by distress warrant, to recover by way of rent reserved, as in the case of a demise, of the said lands, tenements, hereditaments and premises, so much of such interest as shall, from time to time, be, or remain in arrear and unpaid, together with all costs, charges and expenses at-

## COLUMN ONE.

## COLUMN TWO.

tending such levy or distress, as in like cases of distress for rent.

16. Provided that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable.

16. Provided always, and it is hereby further expressly declared and agreed by and between the parties to these presents, that if any default shall at any time happen to be made of or in the payment of the interest money hereby secured or mentioned, or intended so to be, or any part thereof, then and in such case the principal money hereby secured or mentioned, or intended so to be, and every part thereof, shall forthwith become due and payable in like manner and with the like consequences and effects, to all intents and purposes whatsoever, as if the time herein mentioned for payment of such principal money had fully come and expired, but that in such case the said mortgagor, his heirs or assigns, shall on payment of all arrears under these presents, with lawful costs and charges in that behalf, at any time before any judgment in the premises recovered at law, or within such time as, by the practice of equity, relief therein could be obtained, be relieved from the consequences of non-payment of so much of the money secured by these presents, or mentioned, or intended so to be, as may not then have become payable by reason of lapse of time.

17.<sup>f</sup> Provided that until default of payment the mortgagor shall have quiet possession of the said lands.

17. And provided also, and it is hereby further expressly declared and agreed by and between the parties to these presents, that until default shall happen to be made of or in the payment of the said sum of money hereby secured or mentioned, or intended so to be, or the interest thereof, or any part of either of the same, or the doing, observing, performing, fulfilling or keeping some one or more of the provisions, agreements or stipulations herein set forth, contrary to the true intent and meaning of these presents, it shall and may be lawful to and for the said mortgagor, his heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues and profits thereof to his own use and benefit, without let, suit, hindrance, interruption or denial of or by the said mortgagee, his heirs, executors, administrators or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall or may lawfully claim by, from, under or in trust for him, her, them or any or either of them.

### 3. *Intestate Succession.*

CHAP. 105.—Descent of Real Estate, p. 1000.

#### CHAPTER 105.

An Act respecting the Descent of Real Property.

Interpretation, s. 2.

Descents before 1st July, 1834, s. 3.

Descents since 1st July, 1831, ss. 4-11.

Descents between 1st July, 1834 and 1st July, 1852, ss. 12-17.

Descents from 1st January, 1852, ss. 19-48.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

**1.** This Act may be cited as “*The Real Estate Succession Act.*”

Meaning of words in this Act.

**2.** The words and expressions hereinafter mentioned which in their ordinary signification have a more confined or a different meaning, shall, where they occur in the next fifteen sections, numbered from three to seventeen inclusive, except where the nature of the provision or the context thereof excludes such construction, be interpreted as follows, that is to say :

“Land.”

(1) “Land” shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties, or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency ;

“Purchaser.”

(2) “The purchaser” shall mean the person who last acquired the land otherwise than by descent or than by any parti-

tion, by the effect of which the land becomes part of or descendible in the same manner as other land acquired by descent;

(3) "Descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir is an ancestor or collateral relation, as where he is a child or other issue;

(4) "Descendants of any ancestor" shall extend to all persons who must trace their descent through such ancestor; "Descendants."

(5) "The person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; "Person last entitled."

(6) "Assurance" shall mean any deed or instrument (other than a will), by which any land may be conveyed or transferred at Law or in Equity; "Assurance."

(7) "Rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land; and "Rent."

(8) "Person through whom another person is said to claim" shall mean any person by, through or under, or by the act of whom the person so claiming becomes entitled to the estate or interest claimed, as heir, issue in tail, tenant by the curtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise. C. S. U. C. c. 82, s. 14. "Person through whom another person is said to claim."

#### DESCENTS BEFORE 1ST JULY, 1834.

3. This Act shall not extend to any descent which took place on the death of any person who died before the first day of July, one thousand eight hundred and thirty-four. C. S. U. C. c. 82, s. 2. Descents before 1 July, 1834, to be as at Common Law.

#### DESCENTS SINCE 1ST JULY, 1834.

4. The next seven sections of this Act, numbered from five to eleven inclusive, shall not have operation retrospectively to a period of time anterior to the sixth day of March, one thousand eight hundred and thirty-four, so as, by force of any of their provisions, to render any title valid, which in regard to any particular estate had, prior to that day, been adjudged, or has been or may be in any suit which was depending on that day, adjudged invalid on account of any defect, imperfection, matter or thing which is by such sections altered, supplied or remedied; but in every such case the law in regard to any such defect, imperfection, matter or thing, shall, as applied to such title, be deemed and taken to be as if those sections of this Act had not been passed. C. S. U. C. c. 82, s. 15. The next seven sections not to operate retrospectively in certain cases.



Descent shall always be traced from the purchaser, etc.

Imp. Act, 3-4  
W. iv. c. 106,  
s. 2.

**5.** In every case on and after the first day of July, one thousand eight hundred and thirty-four, descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried farther back than the circumstances of the case and the nature of the title require, the person last entitled to the land shall for the purposes of this Act be considered to have been the purchaser thereof, unless it is proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it is proved that he inherited the same; and, in like manner, the last person from whom the land is proved to have been inherited shall in every case be considered to have been the purchaser, unless it is proved that he inherited the same. C. S. U. C. c. 82, s. 4.

Heir entitled under a will shall take as devisee, and a limitation to the grantor or his heir shall create an estate by purchase.

Imp. Act, 3-4  
W. iv. c. 106,  
s. 3.

**6.** Where any land is devised by any testator dying after the first day of July, one thousand eight hundred and thirty-four, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee and not by descent; and where any land is limited by any assurance, executed after the said first day of July, one thousand eight hundred and thirty-four, to the person or to the heirs of the person who thereby conveys the same land, such person shall be considered to have acquired the same as a purchaser, by virtue of such assurance, and shall not be considered to be entitled thereto as of his former estate or part thereof. C. S. U. C. c. 82, s. 5.

Where heirs take by purchase under limitations to the heirs of their ancestor the land shall descend, as if the ancestor had been the purchaser.

Imp. Act, 3-4  
W. iv. c. 106,  
s. 4.

**7.** Where any person acquires any land by purchase, under a limitation to the heirs, or to the heirs of the body of any of his ancestors, contained in an assurance executed after the first day of July, one thousand eight hundred and thirty-four, or under a limitation to the heirs, or to the heirs of the body of any of his ancestors; or under any limitation having the same effect, contained in a will of any testator dying after the said first day of July, one thousand eight hundred and thirty-four, then and in any of such cases, such land shall descend, and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land. C. S. U. C. c. 82, s. 6.

After the death of a person attainted, his descendants may inherit.

Imp. Act, 3-4  
W. iv. c. 106,  
s. 10.

**8.** Where the person from whom the descent of any land is to be traced has had any relation who, having been attainted, died before such descent took place, then such attainer shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land escheated in consequence of such attainer before the first day of July, one thousand eight hundred and thirty-four. C. S. U. C. c. 82, s. 7.

**9.** Proof of entry by the heir after the death of the ancestor shall in no case be necessary in order to prove title in such heir, or in any person claiming by or through him. C. S. U. C. c. 82, s. 8.

Heir-at-law need not prove entry.

**10.** Where any assurance executed before the said first day of July, one thousand eight hundred and thirty-four, or the will of any person who died before that day, contains any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir is entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act had not been passed shall become entitled by virtue of such limitation or gift, whether the person named as ancestor was or was not living on or after the said first day of July, one thousand eight hundred and thirty-four. C. S. U. C. c. 82, s. 9.

Limitations made before 1st July, 1834, to the heirs of a person then living, shall take effect as if this Act had not been passed.

Imp. Act. 3-4 W. iv. c. 106, s. 12.

**11.** Wherever, by any letters patent, assurance or will, made and executed after the first day of July, one thousand eight hundred and thirty-four, land has been or is granted, conveyed or devised to two or more persons other than executors or trustees in fee simple, or for any less estate, it shall be considered that such persons took or take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such letters patent, assurance or will, that they are to take as joint tenants. C. S. U. C. c. 82, s. 10.

Grantees, devisees, &c., shall not take as joint-tenants unless such intention be expressed.

#### DESCENTS BETWEEN 1ST JULY, 1834, AND 1ST JANUARY, 1852.

**12.** As respects every descent between the first day of July, one thousand eight hundred and thirty-four, and the thirty-first day of December, one thousand eight hundred and fifty-one, both days included, and as respects any descent not included or provided for in the sections of this Act numbered from twenty-two to forty-eight, both included, the following sections, numbered from thirteen to seventeen, both included, shall apply retrospectively to the first day of July, one thousand eight hundred and thirty-four, and also prospectively, as the case may be, and shall be construed as if the same had been passed on the said first day of July, one thousand eight hundred and thirty-four. C. S. U. C. c. 82, s. 16.

Descents between the 1st July, 1834, and 31st December, 1851.

**13.** No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent. C. S. U. C. c. 82, s. 17.

Brothers and sisters shall trace descent through parents.

Imp. Act, s. 5.

**14.** Every lineal ancestor shall be capable of being heir to any of his issue, and in any case where there is no issue of the purchaser, his nearest lineal ancestor shall be his heir in pre-

Lineal ancestor to be heir in prefe

rence to collateral persons claiming through him.

Imp. Act, 3-4  
W. iv. c. 106,  
s. 6.

ference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor; so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue. C. S. U. C. c. 82, s. 18.

The male line to be preferred

Imp. Act, 3-4  
W. iv. c. 106,  
s. 7.

**15.** None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants have failed; and no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants have failed; and no female maternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants have failed. C. S. U. C. c. 82, s. 19.

The mother the more remote male ancestor to be preferred to the mother of less remote male ancestor.

Imp. Act, 3-4  
W. iv. c. 106,  
s. 8.

**16.** Where there is a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there is a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor and her descendants. C. S. U. C. c. 82, s. 20.

Half blood to inherit after the whole blood of the same degree.

Imp. Act, 3-4  
W. iv. c. 106,  
s. 9.

**17.** Any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood and his issue, where the common ancestor is a male, and next after the common ancestor where such common ancestor is a female; so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother. C. S. U. C. c. 82, s. 21.

#### DESCENTS ON AND AFTER 1ST OF JANUARY, 1852.

Descents since the 1st January, 1852.

**18.** The twenty-seven sections numbered from twenty-two to forty-eight, both included, shall apply retrospectively to the first day of January, one thousand eight hundred and fifty-two inclusive, and also prospectively, as the case may be, and shall

be construed as if the same had been passed on the said first day of January, one thousand eight hundred and fifty-two. C. S. U. C. c. 82, s. 22.

**19.** In the said twenty-seven sections of this Act numbered from twenty-two to forty-eight, both inclusive—

Interpretation  
as to sections  
22 to 48.

(1) "Real estate" shall be construed to include every estate, interest and right, legal and equitable, held in fee simple or for the life of another (except as in the fortieth section is excepted) in lands, tenements and hereditaments in Ontario, but not such as are determined or extinguished by the death of the intestate seised or possessed thereof, or so otherwise entitled thereto, nor to leases for years; and

"Realestate."

(2) "Inheritance," as therein used, shall be understood to mean real estate as herein defined, descended or succeeded to, according to the provisions of the said twenty-seven sections. C. S. U. C. c. 82, s. 50.

"Inheritance."

**20.** Wherever, in the said sections, numbered from twenty-two to forty-eight both included, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from whom the descent or succession came, and wherever any person is described as having died, it shall be understood that he died before such intestate. C. S. U. C. c. 82, s. 51.

Interpretation  
as to sections  
22 to 48.

**21.** Wherever in any of the said sections the expressions "where the estate came to the intestate on the part of the father" (or "mother"), as the case may be, are used, the same shall be construed to include every case where the inheritance came to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent. C. S. U. C. c. 82, s. 52.

Interpretation  
as to sections  
22 to 48.

**22.** Wherever any person dies seised in fee simple or for the life of another of any real estate in Ontario, without having lawfully devised the same, such real estate shall descend or pass by way of succession in manner following, that is to say:—

How real estate of an intestate dying on or after 1st January, 1852, shall descend.

*Firstly.* To his lineal descendants, and those claiming by or under them, *per stirpes*;

*Secondly.* To his father;

*Thirdly.* To his mother; and

*Fourthly.* To his collateral relatives



subject in all cases to the rules and regulations hereinafter prescribed. C. S. U. C. c. 82, s. 23.

As to descendants in equal degrees of consanguinity.

**23.** If the intestate leaves several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate the common degree of consanguinity may be. C. S. U. C. c. 82, s. 24.

If some children be living and others dead leaving issue.

**24.** If any one or more of the children of such intestate are living and any one or more are dead, the inheritance shall descend to the children who are living, and to the descendants of such children as have died; so that each child who is living shall inherit such share as would have descended to him if all the children of the intestate, who have died leaving issue, had been living; and so that the descendants of each child who is dead shall inherit in equal shares the share which their parent would have received if living. C. S. U. C. c. 82, s. 25.

Same rule as to other descendants in unequal degrees of consanguinity.

**25.** The rule of descent prescribed in the last preceding section shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, are of unequal degrees of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity shall take the shares which would have descended to them, had all the descendants in the same degree of consanguinity who have died leaving issue, been living, and so that the issue of the descendants who have died, shall respectively take the shares which their parents, if living, would have received. C. S. U. C. c. 82, s. 26.

If the intestate leaves no descendant, right of father, mother, &c.

**26.** In case the intestate dies without lawful descendants and leaving a father, then the inheritance shall go to such father, unless the inheritance came to the intestate on the part of his mother, and such mother is living; and if such mother is dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; and if there are no such brothers or sisters, or their descendants living, such inheritance shall descend to the father. C. S. U. C. c. 82, s. 27.

If there be no father entitled to inherit.

**27.** If the intestate dies without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a mother and brothers or sisters, or the descendants of brothers or sisters, then the inheritance shall descend to the mother during her life, and the reversion to such brothers or sisters of the intestate, as are living, and the descendants of such as are dead, according to the same law of inheritance hereinafter provided; and if the intestate in such case leaves no brother or sister, nor

any descendant of any brother or sister, the inheritance shall descend to the mother. C. S. U. C. c. 82, s. 28.

**28.** If there is no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there are several of such relatives all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate the common degree of consanguinity may be. C. S. U. C. c. 82, s. 29.

And if there is neither father nor mother.

**29.** If all the brothers and sisters of the intestate are living, the inheritance shall descend to such brothers and sisters; and if any one or more of them are living and any one or more are dead, then to the brothers and sisters and every of them who are living, and to the descendants of such brothers and sisters as have died, so that each brother or sister who is living shall inherit such share as would have descended to him or her, if all the brothers or sisters of the intestate who have died leaving issue had been living, and so that such descendants shall inherit in equal shares the share which their parent, if living, would have received. C. S. U. C. c. 82, s. 30.

Succession of brothers and sisters and their descendants.

**30.** The same law of inheritance prescribed in the last section shall prevail as to the other direct lineal descendants of every brother and sister of the intestate, to the remotest degree, wherever such descendants are of unequal degrees. C. S. U. C. c. 82, s. 31.

As to such descendants in unequal degrees.

**31.** If there is no heir entitled to take under any of the preceding thirteen sections, the inheritance if the same came to the intestate on the part of his father, shall descend:

If there be no heir under the preceding sections.

*Firstly.* To the brothers and sisters of the father of the intestate in equal shares, if all are living;

*Secondly.* If one or more are living, and one or more have died leaving issue, then to such brothers and sisters as are living, and to the descendants of such of the said brothers and sisters as have died—in equal shares;

*Thirdly.* If all such brothers and sisters have died, then to their descendants; and in all such cases the inheritance shall descend in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate. C. S. U. C. c. 82, s. 32.

**32.** If there be no brothers or sisters, or any of them, of the father of the intestate, and no descendants of such brothers or sisters, then the inheritance shall descend to the brothers and sisters of the mother of the intestate, and to the descendants of such of the said brothers and sisters as have died, or if all

Further provision.

have died, then to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the father. C. S. U. C. c. 82, s. 33.

Further provision if the estate came on the mother's side.

**33.** In all cases not provided for by the fifteen next preceding sections, where the inheritance came to the intestate on the part of his mother, the same, instead of descending to the brothers and sisters of the intestate's father, and their descendants, as prescribed in the thirty-first section, shall descend to the brothers and sisters of the intestate's mother, and to their descendants, as directed in the last preceding section; and if there are no brothers and sisters or descendants of them, then the inheritance shall descend to the brothers and sisters, and their descendants, of the intestate's father, as before prescribed. C. S. U. C. c. 82, s. 34.

If it came neither on father's nor mother's side.

**34.** In cases where the inheritance did not come to the intestate on the part of either the father or the mother, the inheritance shall descend to the brothers and sisters both of the father and mother of the intestate in equal shares, and to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate. C. S. U. C. c. 82, s. 35.

Half blood to succeed with whole blood.

**35.** Relatives of the half blood shall inherit equally with those of the whole blood in the same degree, and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance came to the intestate by descent, devise or gift from some one of his ancestors; in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance. C. S. U. C. c. 82, s. 36.

In cases not provided for, 22-3 Car. ii. c. 10, and 29 Car. ii. c. 3, to apply.

**36.** On failure of heirs under the preceding rules, the inheritance shall descend to the remaining next of kin of the intestate, according to the rules in the English Statute of Distribution of Personal Estate. C. S. U. C. c. 82, s. 37.

Co-heirs to take as tenants in common.

**37.** Wherever there is but one person entitled to inherit according to the provisions of the eighteenth and following sections of this Act, he shall take and hold the inheritance solely; and wherever an inheritance, or a share of an inheritance, descends to several persons under such provisions, they shall take as tenants in common, in proportion to their respective rights. C. S. U. C. c. 83, s. 38.

Descendants &c., born after death of intestate, to inherit.

**38.** Descendants and relatives of the intestate begotten before his death, but born thereafter, shall in all cases inherit in the same manner as if they had been born in the lifetime of the intestate and had survived him. C. S. U. C. c. 82, s. 39.

**39.** Children and relatives who are illegitimate shall not be entitled to inherit under any of the provisions of this Act. C. S. U. C. c. 82, s. 40. Illegitimate persons not to inherit.

**40.** The estate of the husband as tenant by the curtesy, or of a widow as tenant in dower, shall not be affected by any of the provisions of the last preceding twenty-two sections of this Act, nor shall the same affect any limitation of any estate by deed or will, or any estate which, although held in fee simple or for the life of another, is so held in trust for any other person, but all such estates shall remain, pass and descend, as if the last twenty-two sections of this Act numbered from eighteen to thirty-nine, both included, had not been passed. C. S. U. C. c. 82, s. 41. Curtesy, dower and estates by deed or will, excepted.

**41.** If any child of an intestate has been advanced by the intestate by settlement, or portion of real or personal estate, or both of them, and the same has been so expressed by the intestate in writing, or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal estate of such intestate descendible to his heirs, and to be distributed to his next of kin according to law; and if such advancement is equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share in the real and personal estate of the intestate. C. S. U. C. c. 82, s. 42. Cases of children who have been advanced by settlement etc.

**42.** If such advancement is not equal to such share, such child and his descendants shall be entitled to receive so much only of the personal estate, and to inherit so much only of the real estate of the intestate, as is sufficient to make all the shares of the children in such real and personal estate and advancement to be equal, as nearly as can be estimated. C. S. U. C. c. 82, s. 43. If such advancement be not equal.

**43.** The value of any real or personal estate so advanced shall be deemed to be that, if any, which has been acknowledged by the child by any instrument in writing, otherwise such value shall be estimated according to the value of the property when given. C. S. U. C. c. 82, s. 44. Value of property advanced, how estimated.

**44.** The maintaining or educating, or the giving of money to a child without a view to a portion or settlement in life, shall not be deemed an advancement within the meaning of this Act. C. S. U. C. c. 82, s. 45. Education, etc., not advancement.

**45.** The parties authorized to make partition of any such real estate according to law, shall receive from any of the per- As to the purchase by any



of the parties interested of real estate subject to partition.

persons entitled to a share of such real estate, an offer or proposition to purchase the share or shares of the other parties interested therein, giving the preference to the person who would have been the heir-at-law thereto, had the eighteenth and following sections of this Act not been passed; and next after such heir-at-law, giving such preference to the several persons successively who would have been such heir-at-law, had the said last mentioned sections of this Act not been passed, and had those persons preceding them respectively in the series of such preference been dead at the time of the death of the intestate. C. S. U. C. c. 82. s. 46.

Particulars of offer to purchase to be certified to the Court.

**46.** The parties so authorized to make such partition shall certify particularly to the Court in which proceedings for a partition are commenced or pending, the particulars of such offer or proposition for purchase, the nature, quantity and value of the estate or share proposed to be purchased, and whether they advise such offer or proposition to be accepted or rejected. and their reasons therefor. C. S. U. C. c. 82, s. 47.

Any Court authorized to make partition may direct a sale, giving preference to the heir-at-law.

**47.** Any Court authorized to make partition of real estate, may direct a sale of the same if it thinks it right so to do, upon the application of any of the parties beneficially interested therein, giving however the preference at all times to the person who would have been the heir-at-law to such real estate had the eighteenth and following sections of this Act not been passed, and after such heir-at-law, then giving such preference to the several persons successively who would have been such heir-at-law, had the said last mentioned sections of this Act not been passed, and had those persons preceding them respectively in the series of such preference been dead at the time of the death of the intestate. C. S. U. C. c. 82, s. 48.

Terms on which preference to be given.

**48.** Every such preference shall be upon and subject to such terms, security and conditions as the Court thinks it right to direct. C. S. U. C. c. 82, s. 49.

## 4. *Wills and Executors.*

CHAP. 106.—Wills, p. 1011.

“ 107.—Trustees and Executors, p. 1021.

### CHAPTER 106.

#### An Act respecting Wills.

Short title, s. 1.

WILLS BEFORE 1ST JANUARY, 1874,  
ss. 2-6, 20-22, 25, 26, 36.

WILLS AFTER 1ST JAN., 1874 :

Preliminary, ss. 7-9.

Property disposable of by will, and  
persons who may dispose by  
will, ss. 10, 11.

Execution of wills, ss. 12-15.

Wills of soldiers and sailors, s. 14.

Witnesses being interested under  
the will not to invalidate, ss.  
16-19.

Revocation of wills, ss. 20-22.

Obliterations, interlineations, &c.,  
s. 23.

Revival, s. 24.

Construction of wills :

Devise, &c., to operate upon any

interest remaining in testator,  
s. 25.

Operation of wills from time of  
death of testator, s. 26.

Lapsed devises to sink into resi-  
duary devise, s. 27.

General devise what to include,  
ss. 28-30.

“Die without issue,” meaning of,  
s. 31.

General devise to trustees, what  
estate to pass, ss. 32, 33.

Cases where devise does not lapse  
by death of a devisee, ss. 34,  
35.

Mortgage debts, primarily charge-  
able on land, ss. 36, 37.

Imperial Acts repealed, s. 38.

**H**ER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows :—

1. This Act may be cited as “*The Wills Act of Ontario.*” Short title.

WILLS BEFORE 1ST JANUARY, 1874.

2. In the three next succeeding sections of this Act numbered “Land.”  
three to five inclusive the word “land” shall extend to mes-  
suages, and all other hereditaments, whether corporeal or incor-  
poreal, and to money to be laid out in the purchase of land, and  
to chattels and other personal property transmissible to heirs,  
and also to any share of the same hereditaments and properties,  
or any of them, and to any estate of inheritance, or estate for  
any life or lives, or other estate transmissible to heirs, and to any

possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency. C. S. U. C. c. 82, s. 14.

Estates acquired after the making of a will may pass by the will where such intention is expressed.

**3.** Where a will made before and not re-executed, republished or revived after the first day of January, one thousand eight hundred and seventy-four, by any person dying after the sixth day of March, one thousand eight hundred and thirty-four, contains a devise in any form of words of all such real estate as the testator dies seised or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land acquired by the devisor after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof. C. S. U. C. c. 82, s. 11; See 36 V. c. 20, ss. 2 & 46.

A devise of land shall be taken to carry as large an estate as the testator had in the land, unless a contrary intention is expressed.

**4.** Wherever land is devised in any such will as aforesaid, it shall be considered that the devisor intended to devise all such estate as he was seised of in the same land, whether in fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seised of at the time of making the will containing such devise. C. S. U. C. c. 82, s. 12; See 36 V. c. 20, ss. 2 & 46.

Witnesses need not subscribe in the presence of the testator.

**5.** Any will affecting land executed after the sixth day of March, 1834, and before the first day of January, 1874, in the presence of and attested by two or more witnesses, shall have the same validity and effect as if executed in the presence of and attested by three witnesses; and it shall be sufficient if such witnesses subscribed their names in presence of each other, although their names were not subscribed in presence of the testator. C. S. U. C. c. 82, s. 13; See 36 V. c. 20, ss. 2 & 46.

Will by married woman between 4th May, 1859, and 1st January, 1874.

**6.** After the fourth day of May, 1859, and before the first day of January, 1874, every married woman might, by devise or bequest executed in the presence of two or more witnesses, neither of whom was her husband, make any devise or bequest of her separate property, real or personal, or of any rights therein, whether such property was acquired before or after marriage, to or among her child or children issue of any marriage, and failing there being any issue, then to her husband, or as she might see fit, in the same manner as if she were sole and unmarried. C. S. U. C. c. 73, s. 16.

#### WILLS AFTER 1ST JANUARY, 1874.

Commencement of operation of the Act.

**7.** Unless herein otherwise expressly provided, the subsequent sections of this Act shall not extend to any will made before the first day of January one thousand eight hundred

and seventy-four; but every will re-executed or re-published, or revived by any codicil, shall, for the purposes of the said sections, be deemed to have been made at the time at which the same was so re-executed, re-published or revived. 36 V. c. 20, s. 2. Imp. Act 1 V. c. 26, s. 34.

8. The twentieth, twenty-first, twenty-second, twenty-fifth, and twenty-sixth sections of this Act shall not apply to the will of any person who was dead before the first day of January, one thousand eight hundred and sixty-nine, but shall apply to the will of every person who has died since the thirty-first day of December, 1868, or who dies after the passing of this Act. 32 V. c. 8, s. 6. Application of sections 20-22, 25 and 26.

9. In the construction of the sections numbered ten to thirty-eight inclusive in this Act, Interpretation clause.  
Imp. Act 1 V. c. 26, s. 1.

(1.) "Will" shall extend to a testament, and to a codicil, and to an appointment by will, or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of the Act passed in the twelfth year of the reign of King Charles the Second, entitled "*An Act for taking away the Court of Wards, and liveries and tenures in capite, and by knight's service and purveyance, and for settling a revenue upon His Majesty in lieu thereof*," and to any other testamentary disposition; "Will."  
12 Car. ii. c. 24.

(2.) "Real estate" shall extend to messuages, lands, rents, and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; "Realestate."

(3.) "Personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; "Personal estate."

(4.) "Person" and "Testator," shall include a married woman; "Person."  
"Testator."

(5.) "Mortgage" shall include any lien for unpaid purchase money, and any charge, incumbrance, or obligation of any nature whatever upon any lands or tenements of a testator or intestate. 36 V. c. 20, s. 4; 35 V. c. 15, s. 2. "Mortgage."  
Imp. Act 30-31 V. c. 69, s. 2.

10. Every person may devise, bequeath, or dispose of by will, executed in manner hereinafter mentioned, all real estate and personal estate which he may be entitled to either at Law or in Equity, at the time of his death, and which, if not so devised, Power to dispose of all property.  
Imp. Act 1 V. c. 26, s. 3.



*Pur autre vie.* bequeathed, or disposed of, would devolve upon his heir at law, or upon his executor or administrator; and the power hereby given shall extend to estates *pur autre vie*, whether there be or be not any special occupant thereof, and whether the same be a corporeal or incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator be or be not ascertained as the person or one of the persons in whom the same may respectively become vested, and whether he be entitled thereto under the instrument by which the same were respectively created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights of entry, and also to such of the same estates, interests and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will. 36 V. c. 20, s. 5.

Contingent interests.

Rights of entry.

Property acquired after the will.

Wills by infants invalid.  
Imp. Act I V.  
c. 26, s. 7.

**11.** No will made by any person under the age of twenty-one years shall be valid. 36 V. c. 20, s. 6.

Execution.  
Imp. Act I V.  
c. 26, s. 9.

**12.** No will shall be valid unless it is in writing, and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction; and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, and such witnesses, shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary.

Attestation.

Signature.  
Imp. Act 15-16  
V. c. 24, s. 1.

**2.** Every will, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, shall be deemed to be valid, within the meaning of this Act, if the signature is so placed, at, or after, or following, or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature does not follow or is not immediately after the foot or end of the will, or by the circumstance that a blank space intervenes between the concluding word of the will and the signature, or by the circumstance that the signature is placed among the words of the *testimonium* clause, or of the clause of attestation, or follows or is after or under the clause of attestation either with or without a blank space intervening, or follows, or is after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature is on a side, or page, or other portion of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other

portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made. 36 V. c. 20, s. 7.

**13.** No appointment made by will, in exercise of any power, shall be valid, unless the same is executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. 36 V. c. 20, s. 8.

Appointments by will how to be exercised.  
Imp. Act 1 V. c. 26, s. 10.

**14.** Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the passing of this Act. 36 V. c. 20, s. 9.

Wills of personalty of soldiers and sailors.  
Imp. Act 1 V. c. 26, s. 11.

**15.** Every will executed in manner hereinbefore required shall be valid without any other publication thereof. 36 V. c. 20, s. 10.

Publication unnecessary.  
Imp. Act 1 V. c. 26, s. 13.

**16.** If any person who attests the execution of a will is, at the time of the execution thereof, or becomes at any time afterwards, incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid. 36 V. c. 20, s. 11.

Will not invalid if witness interested.  
Imp. Act 1 V. c. 26, s. 14.

**17.** If any person attests the execution of any will, to whom, or to whose wife or husband, any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) is thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will. 36 V. c. 20, s. 12.

Gifts, etc., to witness invalid.  
Imp. Act 1 V. c. 26, s. 15.

**18.** In case by any will any real or personal estate is charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged attests the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution

Creditors competent witnesses.  
Imp. Act 1 V. c. 26, s. 16.

of such will, or to prove the validity or invalidity thereof. 36 V. c. 20, s. 13.

Executor  
competent  
witness.

Imp. Act 1 V.  
c. 26, s. 17.

**19.** No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof. 36 V. c. 20, s. 14.

Revocation by  
marriage.  
Imp. Act 1 V.  
c. 26, s. 18.

**20.** Every will shall be revoked by the marriage of the testator, except a will made in the exercise of a power of appointment where the real or personal estate thereby appointed would not, in default of such appointment, pass to the testator's heir, executor or administrator, or the person entitled as the testator's next of kin under the Statute of Distributions. 32 V. c. 8, s. 3; 35 V. c. 15, s. 3; 36 V. c. 20, s. 15. (*See section eight of this Act.*)

No revocation  
by change in  
circumstances.  
Imp. Act 1 V.  
c. 26, s. 19.

**21.** No will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances. 32 V. c. 8, s. 4; 36 V. c. 20, s. 16. (*See section eight of this Act.*)

How only will  
can be re-  
voked.  
Imp. Act 1 V.  
c. 26, s. 20.

**22.** No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same, by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. 32 V. c. 8, s. 5; 36 V. c. 20, s. 17. (*See section eight of this Act.*)

Obliterations,  
interlinea-  
tions, etc.  
Imp. Act 1 V.  
c. 26, s. 21.

**23.** No obliteration, interlineation or other alteration made in any will after the execution thereof, shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration is executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses are made in the margin or in some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or in some other part of the will. 36 V. c. 20, s. 18.

Revival.  
Imp. Act 1 V.  
c. 26, s. 22.

**24.** No will or codicil, or any part thereof, which has been in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and where any will or codicil which has been partly revoked, and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown. 36 V. c. 20, s. 19.

**25.** No conveyance or other act made or done subsequently to the execution of a will, of or relating to any real or personal estate therein comprised, except an act by which such will is revoked as aforesaid, shall prevent the operation of the will with respect to such estate, or interest in such real or personal estate, as the testator had power to dispose of by will at the time of his death. 32 V. c. 8, s. 2; 36 V. c. 20, s. 20. (*See section eight of this Act.*)

No act as to property named in the will to prevent operation of the will as to any interest left in testator. Imp. Act 1 V. c. 26, s. 23.

**26.** Every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will. 32 V. c. 8, s. 1; 36 V. c. 20, s. 21. (*See section eight of this Act.*)

Will to speak from death. Imp. Act 1 V. c. 26, s. 24.

**27.** Unless a contrary intention appears by the will, such real estate or interest therein as is comprised or intended to be comprised in any devise, in such will contained, which fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will. 36 V. c. 20, s. 22.

Lapsed devise to sink into residuary devise. Imp. Act 1 V. c. 26, s. 25.

**28.** A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them to which such description will extend (as the case may be), as well as freehold estates, unless a contrary intention appears by the will. 36 V. c. 20, s. 23.

Leaseholds, when may pass under a general devise. Imp. Act 1 V. c. 26, s. 26.

**29.** A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description will extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description will extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will. 36 V. c. 20, s. 24.

General gift to include realty and personalty over which testator has power to appoint. Imp. Act 1 V. c. 26, s. 27.



General devise to pass whole estate in the land devised. Imp. Act 1 V.

**30.** Where any real estate is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest, which the testator had power to dispose of by will, in such real estate, unless a contrary intention appears by the will. 36 V. c. 20, s. 25.

Import of words "die without issue" or to that effect. Imp. Act 1 V. c. 26, s. 29.

**31.** In any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention appears by the will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: but this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift be born, or if there be no issue who live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. 36 V. c. 20, s. 26.

Proviso.

When devise to trustee or executor shall pass whole estate of testator. Imp. Act 1 V. c. 26, s. 30.

**32.** Where any real estate is devised to a trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable, or an estate of freehold, is thereby given to him expressly or by implication. 36 V. c. 20, s. 27.

When devise to a trustee shall pass the whole estate beyond what is requisite for the trust. Imp. Act 1 V. c. 26, s. 31.

**33.** Where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, is not given to any person for life, or such beneficial interest is given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust are satisfied. 36 V. c. 20, s. 28.

When devises of estates tail shall not lapse. Imp. Act 1 V. c. 26, s. 32.

**34.** Where any person to whom any real estate is devised for an estate tail or an estate in *quasi* entail, dies in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue are living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. 36 V. c. 20, s. 29.

**35.** Where any person, being a child or other issue of the testator, to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator, leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. 36 V. c. 20, s. 30.

Gifts to issue who leave issue on testator's death, shall not lapse. Imp. Act 1 V. c. 26, s. 33.

**36.** Where any person has died since the 31st day of December, 1865, or hereafter dies seised of or entitled to any estate or interest in any real estate, which, at the time of his death, was or is charged with the payment of any sum or sums of money by way of mortgage, and such person has not, by his will or deed or other document, signified any contrary or other intention, the heir or devisee to whom such real estate descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person; but the real estate so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof. 29 V. c. 28, s. 33; 36 V. c. 20, s. 31.

Mortgage debts to be primarily chargeable on the lands. Imp. Act 17-18 V. c. 113.

2. Nothing herein contained shall affect or diminish any right of the mortgagee on such real estate to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying as aforesaid, or otherwise; and nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed, or document made before the first day of January, one thousand eight hundred and seventy-four. 29 V. c. 28, s. 33; 36 V. c. 20, s. 31.

Proviso.

**37.** In the construction of any will or deed or other document to which the next preceding section of this Act relates, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule in the said section contained, unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate. 35 V. c. 15, s. 1; 36 V. c. 20, s. 32.

Consequence of direction that testator's debts be paid out of personalty. Imp. Act 30-31 V. c. 69, s. 1.

**38.** The Acts of the Imperial Parliament described in the Schedule to this Act (except so far as the same relate to any wills to which the seventh and following sections of this Act do not

Acts repealed.

extend) are, and shall continue to be, repealed to the extent in the third column of the said Schedule mentioned ; but such repeal shall not revive any Act or provision of law repealed by them, nor shall the said repeal prevent the application of any of the said Acts, or of any Act or provision of law formerly in force, to any transaction, matter or thing anterior to the time of the repeal of the said Acts and to which they would otherwise apply. 36 V. c. 20, s. 46.

### SCHEDULE.

ACTS REPEALED.	TITLE OF ACTS REPEALED.	EXTENT OF REPEAL.
32 Hen. 8, cap. 1	The Act of Wills, Wards and Primer Seizins, whereby a man may devise two parts of his land.	The whole Act.
34 & 35 Hen. 8, cap. 5.	The Bill concerning the explanation of Wills.	The whole Act.
29 Car. 2, cap. 3.	An Act for the prevention of Frauds and Perjuries.	Sections 5, 6, 12, 19, 20, 21, & 22.
4 & 5 Anne, cap. 16.	An Act for the amendment of the law and the better advancement of justice.	Section 14.
14 Geo. 2, cap. 20.	An Act to amend the law concerning Common Recoveries, and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for the prevention of Frauds and Perjuries."	Section 9.
25 Geo. 2, cap. 6.	An Act for avoiding and putting an end to certain doubts and questions relating to the attestation of Wills and Codicils concerning real estates in that part of Great Britain called England, and in His Majesty's colonies and plantations in America.	The whole Act.

## CHAPTER 107.

## An Act respecting Trustees and Executors and the Administration of Estates.

Interpretation, s. 1.

Rights and liabilities of trustees:

Indemnity and reimbursement clause, s. 2.

Appointment of new trustees, s. 3.

Trustees buying and selling, s. 4.

Fee simple of bare trustees to vest in their personal representatives, s. 5.

Conveyances by married women as bare trustees, s. 6.

Receipts of trustees to be effectual discharges, s. 7.

Rights and liabilities of executors:

Actions by, for injuries to testator's real estate, ss. 8, 9.

Distress by, 10, 11.

Actions of debt on simple contract against, s. 12.

Execution on judgment against, s. 13.

Liability of the executors of a joint contractor, s. 14.

Executors may assign or convey legal estate of mortgage satisfied, ss. 15, 16.

Devisee in trust or executors empowered to raise money by sale

or mortgage, to satisfy charges, ss. 17-21.

Exercise of powers of sale by executors, &c., when the will names no one to exercise, ss. 22-27.

Investment by trustees or executors, s. 28.

Administration of estates:

Executors empowered to pay debts, compromise, submit to arbitration, &c., s. 29.

Debts payable *pari passu* when deficiency of assets, s. 30.

Limitation of suits for claims rejected by executors, s. 31.

Distribution of residuary personal estate after executor has satisfied claims in respect of rents, covenants, &c., and set apart a fund to meet ascertained future claims, ss. 32, 33.

Distribution of assets after notices given to creditors, s. 34.

Application to Chancery for advice, s. 35.

Allowances to trustees, ss. 36-40.

Allowances to executors, s. 41.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. In the construction of this Act the words "Will," "Real Estate," "Personal Estate," "Person" and "Testator," shall have the meaning assigned to them respectively by the ninth section of "*The Wills Act of Ontario*."

Interpretation.

Rev. Stat., 106.

## RIGHTS AND LIABILITIES OF TRUSTEES.

2. Every deed, will, or other document creating a trust, either expressly or by implication shall, without prejudice to the Every trust instrument to be deemed to



contain clauses  
for the indemnity and reim-  
bursement of  
the trustees.  
Imp. Act 22  
—23 V. c.  
35, s. 31.

clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say:—“That the trustees or trustee, for the time being, of the said deed, will or other instrument, shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited; nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being, of the said deed, will or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument.” 29 V. c. 28, s. 32.

Appointment  
of new trust-  
tees.  
Imp. Act.  
23-4 V. c. 145,  
s. 27.

**3.** Wherever any trustee, either original or substituted, and whether appointed by the Court of Chancery or otherwise, dies, or desires to be discharged from, or refuses, or becomes unfit or incapable, to act in the trusts or powers in him reposed, before the same have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator of the last surviving and continuing trustee, or for the last retiring trustee, by writing, to appoint any other person or persons to be a trustee or trustees, in place of the trustee or trustees dying, or desiring to be discharged, or refusing, or becoming unfit, or incapable to act as aforesaid; and so often as any new trustee or trustees is or are so appointed as aforesaid, all the trust property (if any), which for the time being is vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustees or trustee, shall, with all convenient speed be conveyed, assigned and transferred, so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees, or a surviving or continuing trustee, as the case may require; and every new trustee to be appointed as aforesaid, as well before as after such conveyance, assignment or transfer as aforesaid, and also every trustee appointed by the Court of Chancery, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act as if he had originally been nominated a trustee by the deed, will, or other instrument creating the trust.

2. The power of appointing new trustees hereinbefore contained, may be exercised in cases where a trustee, nominated in a will, has died in the lifetime of the testator. 40 V. c. 8, s. 30.

4. Trustees who are vendors or purchasers may sell or buy without excluding the application of the first section of *The Act to amend the Law of Vendor and Purchaser and to Simplify Titles.* 39 V. c. 29, s. 2. Trustees buying or selling.  
Rev. Stat. c. 109.

5. Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditaments shall vest in the legal personal representative, from time to time, of such trustee. 39 V. c. 29, s. 5. Fee simple estates of bare trustees to vest in their personal representatives.

6. Where any freehold hereditament is vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a *feme sole*, and without her husband joining in the conveyance. 39 V. c. 29, s. 6. Conveyances by married women as bare trustee.

7. The *bona fide* payment of any money to and the receipt thereof by any person to whom the same is payable upon any express or implied trust, or for any limited purpose, and such payment to and receipt by the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust or security. C. S. U. C. c. 90, s. 9. (*See also Rev. Stat. c. 99 s. 7.*) Receipts of trustees to be effectual discharges.

#### RIGHTS AND LIABILITIES OF EXECUTORS, ETC.

8. In case of an injury to the real estate of any person committed within six months next prior to his decease, his executors or administrators may maintain an action of trespass or of trespass on the case therefor, according to the nature of the injury, if brought within one year after his decease, and the damages when recovered shall be part of his personal estate. C. S. U. C. c. 78, s. 1. Executors of any person deceased may maintain actions for injuries done to real estate in testator's lifetime.

9. In case any deceased person, within six months next previous to his decease, committed a wrong to another person in respect of such other person's real or personal property, the person so wronged may, within six months after the executors or administrators of the person who committed the wrong have taken upon themselves the administration of his estate and effects, maintain an action therefor of trespass or of trespass on the case, according to the nature of the wrong, against such executors or administrators, and the damages recovered in such action shall be payable in like order of administration as the debts of the deceased person. C. S. U. C. c. 78, s. 2. To be brought within six months.

Executors and administrators of a lessor may distrain for

**10.** The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done if living. C. S. U. C. c. 78, s. 3.

Such arrearages of rent may be distrained for within six months after determination of the lease.

**11.** Such arrearages may be distrained for at any time within six months after the determination of the term or lease, and during the continuance of the possession of the tenant from whom the arrears became due; and the powers and provisions contained in the several statutes relating to distresses for rent shall be applicable to the distresses so made as aforesaid. C. S. U. C. c. 78, s. 4.

Action of debt on simple contract maintainable against executors.

**12.** An action of debt on simple contract shall be maintainable in any Court of Common Law against any executor or administrator. C. S. U. C. c. 78, s. 5.

Interest in real estate declared seizable on a judgment against an executor, etc.

**13.** The title and interest of a testator or intestate in real estate may be seized and sold under a judgment, and execution recovered by a creditor of the testator or intestate, against his executor or administrator, in the same manner and under the same process that the same could be sold under a judgment and execution against the deceased if living. 27 V. c. 15, s. 1. (*See also Rev. Stat. c. 66, s. 40.*)

Representatives of deceased joint contractors liable although the other joint contractor be living.

**14.** In case any one or more joint contractors, obligors or partners die, the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners, may proceed by action against the representatives of the deceased contractor, obligor or partner, in the same manner as if the contract, obligation or promise, had been joint and several, and this notwithstanding there may be another person liable under such contract, obligation or promise still living, and an action pending against such person; but the property and effects of stockholders in chartered banks or the members of other incorporated companies, shall not be liable to a greater extent than they would have been if this section had not been passed. C. S. U. C. c. 78, s. 6.

Executors of mortgagees may assign, etc.

**15.** Where any person entitled to any freehold land by way of mortgage has departed this life, and his executor or administrator has become entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and the legal estate in the land; and such executor or administrator shall have the same power as to any portion



of the lands on payment of some part of the mortgage debt, or on any arrangement for exonerating the estate, or any part of the mortgage lands without payment of money; and such conveyance, assignment, release or discharge shall be as effectual as if the same had been made by the person having the legal estate. 32 V. c. 10 s. 2. *See also Rev. Stat. c. 99, s. 5.*

**16.** Every certificate of payment or discharge of a mortgage, or of the conditions therein, or of the lands or of any part of the same, or of any part of the money by the mortgagee or his assignee, his heirs, executors, administrators, or assigns or any one of them, at whatsoever time given, and whether before or after the time limited by the mortgage for payment or performance, shall, if in conformity with "*The Registry Act*," be valid to all intents and purposes whatsoever. 31 V. c. 20, s. 62. *See also Rev. Stat. c. 99, s. 6.*

Certificate of payment, &c., to be valid, at whatever time given.

Rev. Stat. c. 111.

**17.** Where, by any will coming into operation after the eighteenth day of September, 1865, or after the passing of this Act, a testator charges his real estate, or any specific portion thereof, with the payment of his debts or with the payment of any legacy or other specific sum of money, and devises the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and does not make any express provision for the raising of such debt, legacy or sum of money out of such estate, the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, may raise such debt, legacy or money as aforesaid by a sale and absolute disposition, by public auction or private contract, of the said real estate or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same think proper. 29 V. c. 28, s. 13; 36 V. c. 20, s. 33.

Devisee in trust may raise money by sale or mortgage to satisfy charges, notwithstanding want of express power in the will.  
Imp. Act, 22-23 V. c. 35, s. 14.

**18.** The powers conferred by the last section shall extend to all and every the person or persons in whom the estate devised is for the time being vested by survivorship, descent or devise, or to any person or persons appointed under any power in the will or by the Court of Chancery to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid. 29 V. c. 28, s. 14; 36 V. c. 20, s. 34.

Power given by last section extended to survivors, devisees, &c.  
Imp. Act, 22-23 V. c. 35, s. 15.

**19.** If a testator who creates such a charge as is described in the seventeenth section does not devise the real estate charged as aforesaid in such terms as that his whole estate and interest therein become vested in any trustee or trustees, the executor or executors for the time being named in the will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore conferred upon the devisee or devisees in trust of the said real estate; and such

Executor to have power of raising money where there is no sufficient devise.  
Imp. Act, 22-23 V. c. 35, s. 16.



powers shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship is for the time being vested; but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate. 29 V. c. 28, s. 15; 36 V. c. 20, s. 35.

Purchasers, etc., not bound to inquire as to exercise of powers.  
Imp. Act, 22-23 V. c. 35, s. 17.

**20.** Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections seventeen, eighteen and nineteen of this Act, or any of them, have been duly and correctly exercised by the person or persons acting in virtue thereof. 29 V. c. 28, s. 16; 36 V. c. 20, s. 36.

Sections 17 to 20 not to affect certain sales nor to extend to devises in fee or in tail.  
Imp. Act, 22-23 V. c. 35, s. 18.

**21.** The provisions contained in sections seventeen, eighteen, nineteen and twenty, shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the eighteenth day of September, one thousand eight hundred and sixty-five; but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not been passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do. 29 V. c. 28, s. 17; 36 V. c. 20, s. 37.

Powers of sale etc., may be exercised by executor when none other named to exercise.

**22.** Wherever there is in any will or codicil of any deceased person, (whether such will has been made, or such person has died before or after the said first day of January, one thousand eight hundred and seventy-four,) any direction, whether express or implied, to sell, dispose of, appoint, mortgage, incumber or lease any real estate, and no person is by the said will, or some codicil thereto, or otherwise by the testator appointed to execute and carry the same into effect, the executor or executors (if any) named in such will or codicil shall and may execute and carry into effect every such direction to sell, dispose of, appoint, incumber or lease such real estate, and any estate or interest therein, in as full, large, and ample a manner, and with the same legal effect, as if the executor or executors of the testator were appointed by the testator to execute and carry the same into effect. 36 V. c. 20, s. 38.

Administrator with will annexed may execute powers of sale, given to the executor, etc.

**23.** Wherever there is in any will or codicil thereto of any deceased person, (whether such will has been made, or such person has died before or after the first day of January, 1874,) any power to any executor or executors in such will to sell, dispose of, appoint, mortgage, incumber, or lease any real estate, or any estate or interest therein, whether such power is express, or arises by implication, and wherever, from any cause, letters of administration with such will annexed have

been by a Court of competent jurisdiction in Ontario committed to any person, and such person has given the additional security required by the fifty-third section of "*The Surrogate Courts Act*," such person shall and may exercise every such power, and sell, dispose of, appoint, mortgage, incur, or lease such real estate, and any estate or interest therein in as full, large, and ample a manner, and with the same legal effect for all purposes, as the said executor or executors might have done. 33 V. c. 18, s. 2; 36 V. c. 20, s. 40.

**24.** Wherever there is in any will or codicil thereto of any deceased person, (whether such will has been made or such person has died before or after the first day of January, 1874,) any power to sell, dispose of, appoint, mortgage, incur, or lease any real estate, or any estate or interest therein, whether such power is express, or arises by implication, and no person is by the said will, or some codicil thereto, or otherwise by the testator appointed to execute such power, and letters of administration with such will annexed, have been by a Court of competent jurisdiction in Ontario committed to any person, and such person has given the additional security before mentioned, such person shall and may exercise every such power, and sell, dispose of, appoint, mortgage, incur, or lease such real estate, and any estate or interest therein, in as full, large, and ample a manner, and with the same legal effect, as if such last named person had been appointed by the testator to execute such power. 33 V. c. 18, s. 3; 36 V. c. 20, s. 41..

**25.** Wherever any person has entered into a contract in writing for the sale and conveyance of real estate, or of any estate or interest therein, and such person has died intestate, or without providing by will for the conveyance of such real estate, or estate or interest therein, to the person entitled or to become entitled to such conveyance under such contract, then, wherever, upon the supposition of the deceased being alive, he would be liable to execute a conveyance, the executor, administrator, or administrator with the will annexed (as the case may be), of such deceased person, shall make and give to the person entitled to the same a good and sufficient conveyance or conveyances of such estates, and of such nature as the said deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor; and such conveyances shall be as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but shall not have any further validity. 33 V. c. 18, s. 4; 36 V. c. 20, s. 42.

**26.** Every executor, administrator, and administrator with the will annexed, shall, as respects the additional powers vested in him by this Act, and any money or assets by him received in consequence of the exercise of such powers, be subject to all the liabilities, and compellable to discharge all the duties

Rev. Stat. c. 46,  
s. 53.

Or when none  
named in the  
will to ex-  
ecute.

Executors, etc.  
may convey in  
pursuance of a  
contract for  
sale made by  
deceased.

Duties and li-  
abilities of an  
executor and  
administrator  
acting under  
the powers  
in this Act.

of whatsoever kind, which, as respects the acts to be done by him under such powers, would have been imposed upon an executor or other person appointed by the testator to execute the same, or in case of there being no such executor or person, would have been imposed by law upon any person appointed by law, or by any Court or Judge of competent jurisdiction to execute such powers. 33 V. c. 18, s. 5; 36 V. c. 20, s. 43.

Powers given by this Act to two or more to survive.

**27.** Where there are several executors, administrators, or administrators with the will annexed, and one or more of them die, the powers hereby created shall vest in the survivor or survivors. 33 V. c. 18, s. 6; 36 V. c. 20, s. 44.

#### INVESTMENTS BY TRUSTEES OR EXECUTORS.

Trustees or executors may invest trust moneys in stock or securities of Dominion or of Province.

**28.** Trustees or executors having trust money in their hands, which it is their duty, or which it is in their discretion, to invest at interest, shall be at liberty, at their discretion, to invest the same in any stock, debentures or securities of the Government of the Dominion of Canada, or of this Province; and such trustees or executors shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same in any such stock, debentures or securities aforesaid, and also, from time to time, at their discretion, to vary any such investments as aforesaid, for others of the same nature; and any such moneys already invested in any such stock, debentures or securities as aforesaid, shall be held and taken to have been lawfully and properly invested. 32 V. c. 37, s. 1.

Investments already made to be held properly invested. Imp. Stat. 23-24 V. c. 145, s. 25.

When powers not to be exercised.

2. None of the powers by this section conferred shall take effect, or be exercisable, by virtue of this Act, by any trustees or executors, if it is expressly declared in the deed, will or other instrument creating such trustees or executors, that such trustees or executors shall not have such power. 32 V. c. 37, s. 4.

This section to apply to all trustees, &c.

3. This section shall apply and extend to both present and future trustees and executors. 32 V. c. 37, s. 3.

#### ADMINISTRATION OF ESTATES.

Executors may pay debts, etc.,

Accept composition as security for same, etc.,

And compound same, etc. Imp. Stat.

**29.** It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition or any security, real or personal, for any debts due to the deceased, and to allow any time for payment of any such debts as they may think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims and things whatsoever relating to the estate of the deceased, and, for any of the purposes aforesaid, to enter into, give and execute such agreements, instruments of composition, releases and other things, as they may think expedient,



without being responsible for any loss occasioned thereby. 23-24 V. c. 145, s. 30.  
 32 V. c. 37, s. 2.

2. None of the powers in this section conferred shall take effect, or be exercisable, by virtue of this Act, by any trustees or executors, if it is expressly declared in the deed, will or other instrument creating such trustees or executors, that such trustees or executors shall not have such power. 32 V. c. 37, s. 4.

When powers not to be exercised.

3. This section shall apply and extend to both present and future trustees and executors. 32 V. c. 37, s. 3.

This section to apply to all trustees.

30. On the administration of the estate of any deceased person, in case of a deficiency of assets, debts due to the Crown and to the executor or administrator of the deceased person, and debts to others, including therein respectively debts by judgment, decree or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as by statute are payable in like order of administration as simple contract debts—shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein contained shall prejudice any lien existing during the lifetime of the debtor on any of his real or personal estate. 29 V. c. 28, s. 28.

In case of deficiency of assets, certain debts to rank *pari passu*, and without priority over each other.

Exception.

31. In case the executor or administrator gives notice in writing to any creditor or other person of whose claims against the estate such executor or administrator has notice, or to the attorney or agent of such creditor or other person, that the said executor or administrator rejects or disputes such claim, it shall be the duty of the claimant to commence his suit in respect of such claim within six months after such written notice was given, in case the debt, or some part thereof, was due at the time of the notice, or within six months from the time the debt, or some part thereof, falls due, if no part thereof was due at the time of the said notice, and in default the said suit shall be for ever barred. 29 V. c. 28, s. 29.

If an executor or administrator rejects a claim, suit must be brought within a certain period, or be barred.

32. Where an executor or administrator, liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, has satisfied all such liabilities under the said lease or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for the lease, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the de-

As to liability of executor or administrator in respect of covenants, &c., in leases of testator or intestate. Imp. Act 22 23 V. c. 35, s. 27.



ceased to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part (as the case may be), of the personal estate of the deceased, to meet any future liability under the said lease, or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease, or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed. 29 V. c. 28, s. 25.

As to liability of executor in respect of rents, &c., in testator's or intestate's conveyances on rent-charge, &c. Imp. Act 22-35, s. 28.

**33.** In like manner where an executor or administrator, liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, has satisfied all such liabilities under the said conveyance, or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part (as the case may be), of the personal estate of the deceased, to meet any future liability under the said conveyance, or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance, or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed. 29 V. c. 28, s. 26.

As to distribution of the assets of testator or intestate after notice

**34.** Where an executor or administrator has given such or the like notices, as in the opinion of the Court in which such executor or administrator is sought to be charged, would have been given by the Court of Chancery in an administration

suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim such executor or administrator had not notice at the time of distribution of the said assets, or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively. 29 V. c. 28, s. 27.

given by executor or administrator.  
Imp. Act 22-23 V. c. 35, s. 29.

*Summary Application to Chancery for Advice.*

**35.** Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the Court of Chancery, or by summons upon a written statement to any such Judge in Chambers, for the opinion, advice or direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate.

Trustee, executor, &c., may apply by petition to Judge of Court of Chancery for opinion, advice, &c., in management, &c., of trust property.  
Imp. Act 22-23 V. c. 35, s. 30.

2. Such petition or statement shall be accompanied by a certificate of counsel, to the effect that in his judgment the case stated is a proper one for the opinion, advice, or direction of the Judge under this Act; and such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge thinks expedient.

3. The costs of such application shall be in the discretion of the Judge to whom the application is made.

4. The trustee, executor or administrator, acting upon the opinion, advice or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator, in the subject matter of the said application: but this provision shall not extend to indemnify any trustee, executor or administrator in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee, executor or administrator has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction. 29 V. c. 28, s. 31.

## ALLOWANCE TO TRUSTEES.

Construction  
of the word  
"Trustee."

**36.** In the four following sections the term "trustee" shall<sup>1</sup> include any trustee under a deed, settlement or will, and executors and administrators, and any guardian appointed by any Court, and a testamentary guardian, or any other trustee, howsoever the trust is created. 37 V. c. 9, s. 1.

Allowance to  
trustees.

**37.** A trustee shall be entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the trust estate, as may be allowed by the Court of Chancery, or any Judge or Master thereof, to whom the matter may be referred. 37 V. c. 9, s. 2.

Allowance  
may be made  
in Chancery,  
though the es-  
tate not before  
the Court.

**38.** A Judge of the Court of Chancery may, on application to him for the purpose, settle the amount of such compensation, although the trust estate is not before the Court in any suit. 37 V. c. 9, s. 3.

Allowance  
fixed by the  
instrument.

**39.** Nothing in the three preceding sections shall apply to any case in which the rate of allowance is fixed by the instrument creating the trust. 37 V. c. 9, s. 4.

Act to apply  
to existing as  
well as future  
trusts.

**40.** The four next preceding sections shall apply to any trust heretofore created, as well as any to be hereafter created. 37 V. c. 9, s. 5.

## ALLOWANCE TO EXECUTORS.

Surrogate  
Judge may or-  
der an allow-  
ance to be  
made to exe-  
cutor or admi-  
nistrator out  
of the estate  
for his  
trouble.

**41.** The Judge of any Surrogate Court may allow to the executor or trustee or administrator acting under will or letters of administration, a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under any will or letters of administration, and in administering, disposing of and arranging and settling the same, and generally in arranging and settling the affairs of the estate, and therefor may make an order or orders from time to time, and the same shall be allowed to an executor trustee or administrator in passing his accounts. C. S. U. C. c. 16, s. 66.

## 5. Confirmation and Evidence of Title.

- CHAP. 108.—Limitations of Actions in respect to Real Estate, and respecting the time of Prescription in certain cases, p. 1033.  
 “ 109.—Evidence between Vendor and Purchaser, p. 1048.  
 “ 110.—Quieting titles to Real Estate, p. 1050.  
 “ 111.—Registration of instruments relating to Land, &c., p. 1063.

### CHAPTER 108.

An Act respecting the Limitation of Suits relating to Real Property, and the time of prescription in certain cases.

Preliminary, ss. 1-3.	Possession of relatives not to be
Period of limitation—ten years after right of action accrued, s. 4.	deemed possession of the heirs, s. 12.
When rights of action deemed to have accrued :	Acknowledgment to be equivalent to possession or receipt of rent, s. 13.
1. On dispossession, s. 5 (1).	Receipt of rent to be deemed receipt of profits, s. 14.
2. On abatement or death, s. 5 (2).	Right of party out of possession extinguished at the end of the period limited, s. 15.
3. On alienation, s. 5 (3)	Action for arrears of dower, rent and interest to be within six years, ss. 16-18.
4. In the case of wild lands, s. 5 (4).	Mortgages :
5. In case of rent under lease, s. 5 (5).	Mortgagor out of possession barred after ten years, s. 19.
6. In case of tenancy from year to year, s. 5 (6).	Acknowledgments, ss. 20, 21.
7. In case of tenancy at will, ss. 5 (7) & (8).	Mortgagee barred after 10 years, s. 22.
8. In case of forfeiture or breach of condition, s. 5 (9), (10).	Actions for money charged on land and legacies, s. 23, 24.
9. In case of future estates, ss. 5 (10), 5 (11), 5 (12).	Actions for dower, s. 25.
Period of limitation as to future estates, s. 6.	Bar of estates tail, ss. 26-28.
Administrator to claim from death of deceased, s. 7.	Limitation of suits in equity, ss. 29-33.
Entry not to be deemed possession, s. 8.	Prescription in cases of easements : Profits à prendre, s. 34.
Continual claims not to preserve rights, s. 9.	Rights of way, water and other easements, s. 35.
Descent cast, warranty, &c, not to bar right of entry or action, s. 10.	
Possession of one joint tenant, &c., not to be deemed possession of another, s. 11.	



Light, s. 36.	Exception as to lands of the Crown, s. 42.
Interruptions, s. 37.	(2.) In cases of land or rent, s. 43-45.
Pleadings in actions claiming easements, &c., s. 38, 39.	Five years allowed from the termination of disability, s. 43.
Disabilities and exceptions :	Twenty years the utmost allowance, s. 44.
(1.) In cases of easements, ss. 40-42.	No further time for a succession of disabilities, s. 45.
Time during which a party under disability not to be counted, s. 40.	
Term of years excluded in computing time in certain cases, s. 41.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.      **1.** This Act may be cited as "*The Real Property Limitation Act.*"

Interpretation.      **2.** The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act excludes such construction, be interpreted as follows, that is to say :

"Land."      (1.) "Land" shall extend to messuages and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land (and to chattels and other personal property transmissible to heirs), and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency ;

"Assurance."      (2.) "Assurance" shall mean any deed or instrument (other than a will) by which any land may be conveyed or transferred at Law or in Equity ; and

"Rent."      (3.) "Rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land. C. S. U. C. c. 88, s. 49.

Commencement of the Act.      **3.** This Act shall commence and be deemed to have taken effect, and chapter eighty-eight of the Consolidated Statutes of Upper Canada, and section twenty-two of the Act passed in

the thirty-second year of Her Majesty's reign, and chaptered seven, to have been repealed, on and after the first day of July in the year of our Lord one thousand eight hundred and seventy-seven, as respects any person who on and for twelve months continuously after the twenty-first day of December, one thousand eight hundred and seventy-four, resided without this Province, and is a person entitled to make an entry or distress or to bring an action or suit to recover any land or rent; or so resident, is a mortgagor, or person entitled to redeem within the meaning of the nineteenth, twentieth or twenty-first sections of this Act; or so resident is a person entitled to, or claiming under a mortgage within the meaning of the twenty-second section; or so resident is a person entitled to bring an action, suit, or other proceeding within the meaning of the twenty-third section; or so resident is a person entitled to an action, suit or other proceeding within the meaning of the twenty-fourth section of this Act; or so resident is a person claiming an estate, interest or right, to take effect after or in defeasance of an estate tail within the meaning of the twenty-eighth section; or so resident is a person entitled to demand dower; and except as respects the persons, and in the cases, mentioned above in this section, this Act shall be deemed to have commenced and taken effect and the said Acts to have been repealed from and after the first day of July, one thousand eight hundred and seventy-six. 38 V. c. 16, s. 16.

#### LAND OR RENT.

4. No person shall make any entry or distress, or bring any action or suit, to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action or suit, first accrued to some person through whom he claims; or if such right did not accrue to any person through whom he claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action or suit, first accrued to the person making or bringing the same. 38 V. c. 16, s. 1.

No land or rent to be recovered but within ten years after the right of action accrued. Imp. 3-4 Wm. iv. c. 27, s. 2; 37-38 V. c. 57, s. 1.

5. In the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned;

When the right shall be deemed to have first accrued.

1. Where the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed, been in possession or in the receipt of the profits of such land, or in receipt of such rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any

On dispossession. Imp. Act, 3-4 W. iv. c. 27, s. 3.

such profits or rent were or was so received. C. S. U. C. c. 88, s. 2 (1).

On abatement  
or death.  
Imp. Act, 3-4  
W. iv. c. 27,  
s. 3.

2. Where the person claiming such land or rent claims the estate or interest of some deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death. C. S. U. C. c. 88, s. 2 (2).

On alienation.  
Imp. Act, 3-4  
W. iv. c. 27,  
s. 3.

3. Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by any instrument other than a will, to him or some person through whom he claims, by a person being in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument has been in possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming, as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument. C. S. U. C. c. 88, s. 2 (3.)

As to lands  
not cultivated  
or improved.

4. In the case of lands granted by the Crown of which the grantee, his heirs or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon or cultivating some portion thereof, and in case some other person not claiming to hold under such grantee has been in possession of such land, such possession having been taken while the land was in a state of nature, then unless it can be shown that such grantee or such person claiming under him while entitled to the lands had knowledge of the same being in the actual possession of such other person, the lapse of ten years shall not bar the right of such grantee or any person claiming under him to bring an action for the recovery of such land, but the right to bring an action shall be deemed to have accrued from the time that such knowledge was obtained: but no such action shall be brought or entry made after twenty years from the time such possession was taken as aforesaid. 27-8 V. c. 29, s. 1; 38 V. c. 16, s. 15.

Proviso.

When rent  
amounting to  
£4 reserved  
by lease in  
writing has  
been wrong-  
fully received,  
the right to  
accrue at the  
time the rent  
was wrong-  
fully received.  
Imp. Act, 3-4  
W. iv. c. 27,  
s. 9.

5. Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of four dollars or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or

rent, subject to such lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid, and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled. C. S. U. C. c. 88, s. 10.

6. Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received (whichever last happened). C. S. U. C. c. 88, s. 9.

No person after a tenancy from year to year to have any right but from the end of the first year or last payment of rent.  
Imp. Act, 3-4 W. iv. c. 27, s. 8.

7. Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined. C. S. U. C. c. 88, s. 7.

In the case of a tenant at will, the right shall be deemed to have accrued at the end of one year.  
Imp. Act, 3-4 W. iv. c. 27, s. 7.

8. No mortgagor or *cestui que trust* shall be deemed to be a tenant at will within the meaning of the next preceding subsection to his mortgagee or trustee. C. S. U. C. c. 88, s. 8.

Case of mortgagor or *cestui que trust*.

9. Where the person claiming such land or rent, or the person through whom he claims, has become entitled, by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken. C. S. U. C. c. 88, s. 2 (5).

In case of forfeiture or breach of condition.  
Imp. Act, 3-4 W. iv. c. 27, s. 3.

10. Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder, and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when the same became an estate or interest in possession, as if no such forfeiture or breach of condition had happened. C. S. U. C. c. 88, s. 4.

Where advantage of forfeiture is not taken by remainderman, he shall have a new right when his estate comes into possession.  
Imp. Act, 3-4 W. iv. c. 27, s. 4.



In case of future estates.  
Imp. Act, 3-4  
W. iv. c. 27,  
s. 3.

11. Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession. C. S. U. C. c. 88, s. 2. (4).

Provisions for case of future estates.  
Imp. Act, 3-4  
W. iv. c. 27,  
s. 5.  
37-8 V. c. 57,  
s. 2.

12. A right to make an entry or a distress, or to bring an action or a suit, to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same became an estate or interest in possession, by the determination of any estate or estates in respect of which such land has been held or the profits thereof or such rent have been received, notwithstanding that the person claiming such land or rent, or some person through whom he claims, has, at any time previously to the creation of the estate or estates which have determined, been in the possession or receipt of the profits of such land, or in receipt of such rent. 38 V. c. 16, s. 2.

Time limited as to future estates when person entitled to the particular estate out of possession, etc. Imp. Act, 37-8 V. c. 57, s. 2.

6. If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action or suit shall be brought, by any person becoming entitled in possession to a future estate or interest, but within ten years next after the time when the right to make an entry or distress, or to bring an action or suit for the recovery of such land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of those two periods is the longer. 38 V. c. 16, s. 3.

The case of bar of future estate and of a subsequent interest created after right of entry, etc., accrued to owner of particular estate.  
Imp. Act, 37-8 V. c. 57, s. 2.

2. If the right of any such person to make such entry or distress, or to bring any such action or suit, has been barred under this Act, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement executed or taking effect after the time when a right to make an entry or distress, or to bring an action or suit, for the recovery of such land or rent, first accrued to the owner of the particular estate whose interest has so determined as aforesaid, shall make any such entry or distress, or bring any such action or suit, to recover such land or rent. 38 V. c. 16, s. 4.

When the right to an estate in possession is

3. Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to

which he has been entitled for an estate or interest in possession, has been barred by the determination of the period, hereinbefore limited, which is applicable in such case, and such person has, at any time during the said period, been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of such estate or interest in possession. C. S. U. C. c. 88 s. 48.

**7.** For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose chattels he has been appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. C. S. U. C. c. 88, s. 6.

barred, the right of the same persons to future estates shall also be barred. Imp. Act. 3-4 W. iv. c. 27, s. 20.

An administrator to claim as if he obtained the estate without interval after death of deceased. 3-4 W. iv. c. 27, s. 6.

**8.** No person shall be deemed to have been in possession of any land within the meaning of this Act, merely by reason of having made an entry thereon. C. S. U. C. c. 88, s. 11.

A mere entry not to be deemed possession. *Idem* s. 10.

**9.** No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. C. S. U. C. c. 88, s. 12.

No right to be preserved by continual claim. *Idem* s. 11.

**10.** No descent cast, discontinuance or warranty, which has happened or been made since the first day of July, one thousand eight hundred and thirty-four, or which may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land. C. S. U. C. c. 27, s. 80.

No descent, warranty, &c., to bar a right of entry or action. *Idem* s. 39.

**11.** Where any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. C. S. U. C. c. 88, s. 13.

Possession of one coparcener, &c., not to be the possession of the others. Imp. Act. 3-4 W. iv. c. 27, s. 12.

**12.** Where a relation of the persons entitled, as heirs, to the possession, or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs. C. S. U. C. c. 88, s. 14.

Possession of relations not to be the possession of the heirs. *Idem* s. 13.

Acknowledgment in writing given to the person entitled or his agent, to be equivalent to possession or receipt of rent. Imp. Act, 3-4 W. iv. c. 27, s. 14.

**13.** Where any acknowledgment of the title of the person entitled to any land or rent has been given to him or to his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in the receipt of such rent, such possession or receipt of or by the person by whom such acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment was given at the time of giving the same, and the right of such last mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. C. S. U. C. c. 88, s. 15.

Receipt of rent to be deemed receipt of profits. Imp. Act, 3-4 W. iv. c. 27, s. 35.

**14.** The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act. C. S. U. C. c. 88, s. 17.

At the end of the period of limitation the right of the party out of possession to be extinguished. Imp. Act, 3-4 W. iv. c. 27, s. 34.

**15.** At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period, shall be extinguished. C. S. U. C. c. 88, s. 16.

#### ARREARS OF DOWER, RENT, AND INTEREST.

No arrears of dower to be recovered for more than six years. *Idem* s. 41.

**16.** No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit. C. S. U. C. c. 88, s. 18.

No arrears of rent or interest to be recovered for more than six years. Imp. Act, 3-4 W. c. 27, s. 42.

**17.** No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action or suit, but within six years next after the same respectively has become due, or next after any acknowledgment of the same in writing has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent. C. S. U. C. c. 88, s. 19.

Exception in favour of subsequent mortgagee when a prior mortgagee has been in possession. *Idem* s. 42.

**18.** Where any prior mortgagee or other incumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit is brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in



such action or suit the arrears of interest which have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years. C. S. U. C. c. 88, s. 20.

## MORTGAGES.

**19.** Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action or suit to redeem the mortgage, but within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him; and in such case no such action or suit shall be brought, but within ten years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. 38 V. c. 16, s. 8.

Mortgagor to be barred at end of ten years from the time when the mortgagee took possession, or from the last written acknowledgment.  
Imp. Acts 3-4 W. iv, c. 27, s. 28; and 37-8 V. c. 57, s. 7.

**20.** In case there are more mortgagors than one, or more persons than one claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons. 38 V. c. 16, s. 9.

Acknowledgment to one of several mortgagors.  
Imp. Act 3-4 W. iv, c. 27, s. 28.

**21.** In case there are more mortgagees than one, or more persons than one claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him, or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons aforesaid as have given such acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of

Acknowledgment by one of several mortgagees.  
Imp. Act 3-4 W. iv, c. 27, s. 28.



such divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage. 38 V. c. 16, s. 10.

Mortgagee may enter or sue within ten years from last payment. Imp. Act 7, W. 4 & 1 V. c. 28.

**22.** Any person entitled to or claiming under a mortgage of land, may make an entry or bring an action at Law or suit in Equity to recover such land, at any time within ten years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than ten years have elapsed since the time at which the right to make such entry, or bring such action or suit first accrued. 38 V. c. 16, s. 12.

Money charged upon land and legacies to be deemed satisfied at the end of ten years if no interest paid or acknowledgment given in writing in the meantime. Imp. Acts 3-4 W. iv, c. 27, s. 40; and 37-8 V. c. 57, s. 8.

**23.** No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at Law or in Equity, or any legacy, but within ten years next after a present right to receive the same accrued to some person capable of giving a discharge for, or release of the same, unless in the meantime some part of the principal money, or some interest thereon, has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person by whom the same is payable, or his agent, to the person entitled thereto or his agent: and in such case no action or suit or proceeding shall be brought, but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given. 38 V. c. 16, s. 11.

Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising same. Imp. Act 37 8 V. c. 57, s. 10.

**24.** No action, suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at Law or in Equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust. 38 V. c. 16, s. 13.

#### DOWER.

Action of dower to be brought within ten years.

**25.** No action of or suit for dower shall be brought but within ten years from the death of the husband of the doweress, notwithstanding any disability of the doweress or of any person claiming under her. 38 V. c. 16, s. 14.

#### BAR OF ESTATES TAIL.

Where period of limitation elapsed against a tenant in tail to be deemed to have elapsed

**26.** Where the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same, has been barred by reason of the same not having been made or brought within the period limited by this Act,

no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which such tenant in tail might lawfully have barred. C. S. U. C. c. 88, s. 28.

against those whose rights he could have barred.  
Imp. Act. 3-4 W. iv, c. 27, s. 21.

**27.** Where a tenant in tail of any land or rent entitled to recover the same has died before the expiration of the period limited by this Act, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred, shall make an entry or distress or bring an action to recover such land or rent, but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action. C. S. U. C. c. 88, s. 29.

Term elapsed in such cases during the life of the tenant to be computed against those whose rights he could have barred.  
Imp. Act. 3-4 W. iv, c. 27, s. 22.

**28.** Where a tenant in tail of any land or rent has made an assurance thereof, which does not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person is by virtue of such assurance, at the time of the execution thereof, or at any time afterwards, in possession or receipt of the profits of such land, or in the receipt of such rent, and the same person or any other person whosoever (other than some person entitled to such possession or receipt in respect of an estate which has taken effect after or in defeasance of the estate tail) continues or is in such possession or receipt for the period of ten years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail, or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then, at the expiration of such period of ten years, such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail. 38 V. c. 16, s. 7.

In case of possession under an assurance by a tenant in tail, which shall not bar the remainders, they shall be barred at the end of ten years after that period at which the assurance, if then executed, would have barred them.  
Imp. Acts, 3-4 W. iv, c. 27, s. 23; and 37-8 V. c. 57, s. 6.

#### LIMITATION OF SUITS IN EQUITY.

**29.** No person claiming any land or rent in Equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress, or brought an action to recover the same respectively if he had been entitled at Law to such estate, interest or right, in or to the same as he claims therein in Equity. C. S. U. C. c. 88, s. 31.

No suit in equity to be brought after the time when the plaintiff, if entitled at law, might have brought an action.  
Imp. Act 3-4 W. iv, c. 27, s. 24.

**30.** Where any land or rent is vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such land or

In case of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser.

Imp. Act, 3-4  
W. iv, c. 27,  
s. 25.

rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him. C. S. U. C. c. 88, s. 32.

In cases of fraud no time shall run whilst the fraud remains concealed.  
Imp. Act, 3-4  
W. iv, c. 27,  
s. 26.

**31.** In every case of a concealed fraud, the right of any person to bring a suit in Equity for the recovery of any land or rent which he or any person through whom he claims may have been deprived by such fraud shall be deemed to have first accrued at and not before the time at which such fraud was or with reasonable diligence might have been first known or discovered. C. S. U. C. c. 88, s. 33.

Unless in the case of *bona fide* purchaser for value without notice.  
Imp. Act, 3-4  
W. iv, c. 27,  
s. 26.

**32.** Nothing in the last preceding section contained shall enable any owner of lands or rents to have a suit in Equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud against any *bona fide* purchaser for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase did not know, and had no reason to believe that any such fraud had been committed. C. S. U. C. c. 88, s. 34.

Saving the jurisdiction of equity on the ground of acquiescence or otherwise.  
Imp. Act, 3-4  
W. iv, c. 27,  
s. 27.

**33.** Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of Courts of Equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring a suit is not barred by virtue of this Act. C. S. U. C. c. 88, s. 35.

#### PREScription IN CASES OF EASEMENTS.

Certain claims not to be defeated by showing only that the enjoyment began more than 30 years ago.  
Imp. Act, 2-3  
W. iv, c. 71,  
s. 1.

**34.** No claim which may be lawfully made at the Common Law, by custom, prescription or grant, to any profit or benefit to be taken or enjoyed from or upon any land of our Sovereign Lady the Queen, Her Heirs or Successors, or of any ecclesiastical or lay person or body corporate, except such matters or things as are hereinafter specially provided for, and except rent, and services, shall, where such profit or benefit has been actually taken and enjoyed by any person claiming right thereto, without interruption for the full period of thirty years, be defeated or destroyed by showing only that such profit or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such profit or benefit has been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. C. S. U. C. c. 88, s. 36.

Indefeasible if enjoyed over 60 years.

**35.** No claim which may lawfully be made at the Common Law by custom, prescription or grant, to any way or other easement, or to any water-course, or the use of any water to be enjoyed, or derived upon over, or from any land or water of our said Lady the Queen, Her Heirs or Successors, or being the property of any ecclesiastical or lay person or body corporate, when such way or other matter as herein last before mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to the period of twenty years: but, nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated, and where such way or other matter as herein last before mentioned has been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. C. S. U. C. c. 88, s. 37.

Right of way or water not to be defeated by showing only that it began more than 20 years ago.  
Imp. Act 2-3  
W. iv, c. 71, s. 2.

Indefeasible if enjoyed over 40 years.

**36.** Where the access and use of light to or for any dwelling house, workshop, or other building has been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. C. S. U. C. c. 88, s. 38.

Access and use of light enjoyed for 20 years indefeasible.  
Imp. Act 2-3  
W. iv, c. 71, s. 3.

**37.** Each of the respective periods of years in the last three preceding sections mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period relates was or is brought into question; and no act or other matter shall be deemed an interruption within the meaning of the said three sections, unless the same has been submitted to or acquiesced in for one year after the party interrupted has had notice thereof, and of the person making or authorizing the same to be made. C. S. U. C. c. 88, s. 39.

How the terms shall be calculated, and what acts only shall be an interruption to the prescription.  
Imp. Act 2-3  
W. iv, c. 71, s. 4.

**38.** In all actions upon the case and other pleadings wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same is denied, all and every the matters in the four next preceding sections of this Act mentioned and provided, which are applicable to the case, shall be admissible in evidence to sustain or rebut such allegation; and in all pleadings to actions of trespass, and in all other pleadings wherein it would formerly have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed, for and during

What allegation by the party claiming shall be sufficient.  
Imp. Act 2-3  
W. iv, c. 71, s. 5.

What proof admitted for or against such allegation.



such of the periods mentioned in this Act as are applicable to the case, and without claiming in the name or right of the owner of the fee as was usually done; and if the other party intends to rely on any proviso, exception, incapacity, disability, contract, agreement or other matter hereinbefore mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation. C. S. U. C. c. 88, s. 40.

No presumption admissible on proof of enjoyment for a less period than prescribed by this Act. Imp. Act 2-3 W. iv, c. 71, s. 6.

**39.** In the several cases mentioned in and provided for by this Act, of claims to lights, ways, water-courses or other easements, no presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as is applicable to the case and to the nature of the claim. C. S. U. C. c. 88, s. 41.

#### DISABILITIES AND EXCEPTIONS.

##### 1.—*In cases of Easements.*

Time during which a party could not act not to be computed against him. Imp. Act 2-3 W. iv, c. 71, s. 7.

**40.** The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in the thirty-fourth to the thirty-ninth sections inclusive of this Act, is an infant, idiot, *non compos mentis*, or tenant for life, or during which any action or suit has been pending and has been diligently prosecuted until abated by the death of any party or parties thereto, shall be excluded in the computation of the period in said sections mentioned, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. C. S. U. C. c. 88, s. 42.

Terms of years, &c., excluded from computation in certain cases. Imp. Act 2-3 W. iv, c. 71, s. 8.

**41.** Where any land or water upon, over or from which any such way or other easement, water-course or run of water has been enjoyed or derived, or has been held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of such term shall be excluded in the computation of the said period of forty years, in case the claim is, within three years next after the end, or sooner determination of such term, resisted by any person entitled to any reversion expectant on the determination thereof. C. S. U. C. c. 88, s. 43.

Exception as to lands of the Crown not duly surveyed and laid out.

**42.** Nothing in the thirty-fourth to the thirty-ninth sections inclusive of this Act shall support or maintain any claim to any profit or benefit to be taken or enjoyed from or upon any land of

our Sovereign Lady the Queen, Her Heirs and Successors, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of our said Lady the Queen, Her Heirs and Successors, unless such land, way, easement or water-course or other matter lies and is situate within the limits of some Town or Township, or other parcel or tract of land duly surveyed and laid out by proper authority. C. S. U. C. c. 88, s. 44.

## 2.—*In cases of Land or Rent.*

**43.** If at the time at which the right of any person to make an entry or distress, or to bring an action or a suit to recover any land or rent, first accrues as aforesaid, such person is under any of the disabilities hereinafter mentioned (that is to say), infancy, idiocy, lunacy or unsoundness of mind, then such person, or the person claiming through him, notwithstanding that the period of ten years or five years (as the case may be, hereinbefore limited has expired, may make an entry or a distress, or bring an action or a suit, to recover such land or rent at any time within five years next after the time at which the person to whom such right first accrued ceased to be under any such disability, or died (whichever of those two events first happened). 38 V. c. 16, s. 5.

In cases of infancy, or lunacy at the time when the right of action accrues, then five years to be allowed from the termination of the disability or previous death. Imp. Acts 3-4 W. iv, c. 27, s. 16; 37-8 V. c. 57, s. 5.

**44.** No entry, distress, action or suit shall be made or brought by any person, who, at the time at which his right to make any entry or distress, or to bring an action or suit to recover any land or rent, first accrued, was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty years next after the time at which such right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such twenty years, or although the term of five years from the time at which he ceased to be under any such disability, or died, may not have expired. 38 V. c. 16, s. 6.

Twenty years utmost allowance for disabilities. Imp. Acts 3-4 W. iv, c. 27, s. 17. 37-8 V. c. 57, s. 5.

**45.** Where any person is under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rents first accrues, and departs this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the said period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, first accrued or the said period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person. C. S. U. C. c. 88, s. 47; 38 V. c. 16, s. 15.

No further time to be allowed for a succession of disabilities. Imp. Acts 3-4 W. iv, c. 27, s. 18; 37-8 V. c. 57, s. 9.

## CHAPTER 109.

## An Act to amend the Law of Vendor and Purchaser and to Simplify Titles.

Certain documents, &c., to be *prima facie* evidence in investigation of title, s. 1.

1. Recitals, &c., 20 years old, s. 1 (1).

2. Memorials of discharged mortgages, s. 1 (2).

3. Memorials 20 years old, s. 1 (3).

4. Receipts in conveyances, s. 1 (4).

Also to be *prima facie* evidence in suits, s. 2.

Summary applications to Chancery respecting requisitions, objections, &c., s. 3.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Rights of vendors and purchasers in contracts of sale of lands.

1. In the completion of any contract of sale of land made after the tenth day of February, 1876, the rights and obligations of vendors and purchasers shall be regulated by the following rules (but subject to any stipulation in such contract to the contrary), namely:—

Recital, etc, 20 years old, of facts, etc., *prima facie* evidence.

(1.) Recitals, statements and description of facts, matters and parties contained in deeds, instruments, Acts of Parliament or statutory declarations twenty years old at the date of the contract, shall, unless and except so far as they are proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

Memorials of discharged mortgages.

(2.) Registered memorials of discharged mortgages shall be sufficient evidence of the mortgages without the production of the mortgages themselves, unless and except so far as such memorials are proved to be inaccurate; and the vendor shall not be bound to produce the mortgages unless they appear to be in his possession or power.

Memorials 20 years old, when, and of what, evidence.

(3.) In case of registered memorials twenty years old, of other instruments, if the memorials purport to be executed by the grantor, or in other cases, if possession has been consistent with the registered title, the memorials shall be sufficient evidence without the production of the instruments to which the

memorials relate, except so far as such memorials are proved to be inaccurate; and the vendor shall not be bound to produce the original instruments unless they appear to be in his possession or power; and the memorials shall be presumed to contain all the material contents of the instruments to which they relate.

(4.) Where a registered deed of conveyance acknowledges payment of the consideration money, such acknowledgment shall be sufficient evidence of payment, except so far as such acknowledgment is proved to be inaccurate. Receipt in a conveyance.

(5.) The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title, shall not be an objection to the title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents. 39 V. c. 29, s. 1. Inability to furnish covenant to produce and furnish documents of title.

2. In suits at Law or in Equity it shall not be necessary to produce any evidence which, by the first section of this Act, is dispensed with as between vendor and purchaser; and the evidence therein declared to be sufficient as between vendor and purchaser shall be *prima facie* sufficient for the purposes of such suits. 39 V. c. 29, s. 7. *See also Rev. Stat. c. 62 s. 49.* Evidence in actions or suits.

3. A vendor or purchaser of real or leasehold estate or their representatives respectively may at any time or times and from time to time apply in a summary way to the Court of Chancery, or a Judge thereof in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract); and the Judge shall make such order upon the application as to him appears just, and shall order how and by whom all or any of the costs of and incidental to the application shall be borne and paid. 39 V. c. 29, s. 3. Summary applications to Court of Chancery in respect to requisitions, objections or compensation, etc. Costs.



## CHAPTER. 110.

## An Act for Quieting Titles to Real Estate.

Applications to quiet titles,	performance where vendor is to have an indefeasible title, s. 32.
By whom may be made, ss. 1-4.	Judicial investigation of particular facts affecting titles, ss. 33-41;
Form of, s. 5.	Appeals, s. 42.
Registration of <i>lis pendens</i> , s. 6.	Miscellaneous,
Evidence in support of, ss. 7-13.	No objection that petitioner has not obtained possession, s. 43.
Notices of, ss. 14-17.	Proceedings not abated by death, &c., s. 44.
Adverse claims, ss. 18-19.	Nor to be void for want of form, s. 45.
Costs, ss. 20, 21.	Remedial construction of Act, s. 46.
Withdrawal of applications, s. 22.	Certificates obtained by fraud, s. 47.
Reference of petitions to Masters, &c., s. 23.	Offences and penalties,
Assistance of counsel, s. 24.	Fraudulent certificates, 29 V., c. 25, s. 48, p. 1059.
Certificate of title, s. 25.	Forging, &c. of certificate, 29 V. c. 25, s. 49, p. 1059.
To be subject to certain exceptions, unless otherwise prayed, s. 26.	Other remedies unaffected, s. 48.
Form of, s. 27.	General Orders, s. 49.
Registration, s. 28.	Schedule of Forms, p. 1060.
Effect of, s. 29.	
Evidence of, s. 30.	
Quieting titles in Chancery sales, ss. 31.	
Quieting titles in suits for specific	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

1. This Act may be cited as "*The Quieting Titles Act.*"

Owners, &c., in fee simple may obtain judicial investigation of title.

2 Any owner of an estate in fee simple in land or any trustee for the sale of the fee simple, shall be entitled to have his title judicially investigated and the validity thereof ascertained and declared; and he shall be so entitled whether he has the legal estate or not, and whether his title is subject or not to any charges or incumbrances. 29 V. c. 25, s. 1.

In case of any other estate; investigation to be discretionary with the Judge.

3. Any other person who has any estate or interest, legal or equitable, in or out of land in Ontario, may also apply for the investigation of his title and a declaration of the validity thereof; but it shall be in the discretion of the Judge by or before whom the proceedings are taken, to grant or refuse the application for the investigation; and such discretion may be invoked and exercised at any stage of the proceedings, and the decision of the Judge in exercising such discretion shall be subject to appeal like any other decision. 29 V. c. 25, s. 2.

4. Her Majesty's Attorney General for Ontario may apply, under this Act, for an investigation of the title of the Crown to any lands in Ontario, and a declaration of the validity thereof. The application may be made by information instead of petition, but in other respects the practice and procedure upon such an application shall be the same as in ordinary cases. 39 V. c. 7, s. 12.

Attorney-General may apply to quiet title to Crown Lands.

Procedure

5. The application shall be made to the Court of Chancery or any Judge thereof, and subject to the provisions of section four, shall be by a short petition according to the form (No. 1) given in the Schedule to this Act. 29 V. c. 25, s. 3.

Form of application and to whom.

6. A certificate by the Clerk of Records and Writs, Registrar, or other officer authorized by the Court to sign the same, of the petition being filed, shall be registered in the Registry Office of the Registration Division in which the land lies, and this certificate may be according to the form (No. 2) given in the Schedule to this Act. 29 V. c. 25, s. 4; 37 V. c. 7, s. 51.

Registry of application.

7. The application shall be supported by the following particulars:

How the application must be supported.

1. The title deeds (if any) and evidences of title relating to the land that are in the possession or power of the applicant;

Title deeds.

2. A certified copy of all registered instruments, or registered memorials of instruments, affecting the land, or of all since the last judicial certificate, if any, under this Act, was given (as the case may be), up to the time of the registering of a certificate of the petition as provided for by section six.

Registered instruments

3. The certificate of the Registrar of the County or other Registration Division in which the land lies, as to bills and proceedings in Chancery relating to the land, and of which a certificate has been registered in his office;

Registrar's certificate

4. A concise statement of such facts as are necessary to make out the title, and which do not appear in the produced documents; but no abstract of produced documents shall be required except on special grounds;

Statement of facts.

5. Proofs of any facts which are required to be proved in order to make out the title, and which are not established by the other produced documents, unless the Judge dispenses with such proofs until a future stage of the investigation;

Proofs of facts.

6. An affidavit or deposition by the person whose title is to be investigated and a certificate of one of his counsel or solicitors, to the effect hereinafter respectively mentioned, unless the Judge sees fit, for some special reason, to dispense with the same respectively;

Affidavit and certificate of counsel, &c.

7. A schedule of the particulars produced under this section. 29 V. c. 25, s. 5.

Schedule.

What the affidavit or deposition of the applicant must state.

8. The affidavit or deposition of the person whose title is to be investigated shall state to the effect, that to the best of his knowledge and belief he is the owner of the estate or interest (whatever it is) which is claimed by the petition, subject only to the charges and incumbrances set forth in the petition or in the schedule thereto, or that there is no charge or incumbrance affecting the land; that the deeds and evidences of title which he produces, and of which a list is contained in the schedule produced under the next preceding section, are all the title deeds and evidences of title relating to the land that are in his possession or power, and that he is not aware of the existence of any claim adverse to or inconsistent with his own to any part of the land or to any interest therein, or if he is aware of such adverse claim, he shall set forth every such adverse claim, and shall depose that he is not aware of any, except what he sets forth; and the affidavit or deposition shall also set forth whether any one is in possession of the land and under what claim, right or title; and shall state that to the best of the deponent's knowledge, information and belief, the said affidavit or deposition, and the other papers produced therewith, fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings which affect the same or any part thereof, or give any right as against the applicant. 29 V. c. 25, s. 6.

As to adverse claims or possession &c.

To certain cases it may be dispensed with or made by another person.

2. The said affidavit or deposition may, in a proper case, be dispensed with, or may be made by some other person instead of the person whose title is to be investigated, or an affidavit or deposition as to part may be made by one person, and as to part by another, at the discretion of the Judge to whom the application is made; and in such case the affidavit shall be modified accordingly. 29 V. c. 25, s. 7.

What the certificate of counsel or solicitor must state.

9. The certificate of the counsel or solicitor shall state to the effect that he has investigated the title, and believes the party to be the owner of the estate which the petition claims in the land in question, subject only (if such is the case) to any charges or incumbrances that may be set forth in the schedule to the petition, (or that he so believes, subject to any condition, qualification or exemption to be set forth in the certificate); and that he has conferred with the deponent on the subject of the various matters set forth in the affidavit or deposition referred to in the two next preceding sections, and believes the affidavit or deposition to be true. 29 V. c. 25, s. 8.

On what evidence Judge may proceed.

10. The Judge in investigating the title may receive and act upon any evidence that is now received by any of the Courts on a question of title, and any evidence which the practice of English Conveyancers authorizes to be received on an investigation of a title out of Court; or any other evidence, whether the same is or is not receivable or sufficient in point of strict law, or according to the practice of the English Conveyancers,

provided the same satisfies the Judge of the truth of the facts intended to be made out thereby. 29 V. c. 25, s. 9.

2. It shall not be necessary to produce any evidence which, by the first section of *The Act to amend the law of Vendor and Purchaser and to Simplify Titles*, is dispensed with as between vendor and purchaser, nor to produce or account for the originals of any registered deeds, documents or instruments, unless where the Judge before whom the investigation is had, otherwise directs. 39 V. c. 29, s. 4.

Evidence in proceedings to quiet titles.  
Rev. Stat. c. 109.

11. The proofs required may be by, or in the form of affidavits or certificates; or may be given *viva voce*; or may be in any other manner or form that under the circumstances of the case is satisfactory to the Judge in regard to the matters to which the same relate. 29 V. c. 25, s. 10.

Form of proofs

12. Before a certificate of title is granted, satisfactory evidence shall be given by certificate, affidavit or otherwise, that all taxes, rates and assessments, for which the land is liable, have been paid, or that all, except those for the current year, have been paid. 29 V. c. 25, s. 16.

Taxes must have been paid.

13. If the Judge is not satisfied with the evidence of title produced in the first instance, he shall give a reasonable opportunity of producing further evidence, or of removing defects in the evidence produced. 29 V. c. 25, s. 11.

Further proof if Judge not satisfied.

14. Before giving a certificate or conveyance under this Act the Judge shall direct to be published in the *Ontario Gazette*, and if he sees fit in any other newspaper or newspapers, and in such form, and for such period or periods as the Judge thinks expedient, a notice either of the application being made, or of the order or decision of the Judge thereon; and the certificate or conveyance shall not be signed or executed until after the expiration of at least four weeks from the first publication of such notice, or such other period as the Judge may appoint. 29 V. c. 25, s. 12.

Judge to order notice to be published.

15. Where the Judge is satisfied respecting the title, and considers that the certificate of title can safely be granted without any other notice of application than the published notice so required, he shall grant the certificate accordingly. 29 V. c. 25, s. 13.

Or grant certificate without notice.

16. In case there appears to exist any claim adverse to or inconsistent with that of the petitioner to or in respect of any part of the land, the Judge shall direct such notice as he deems necessary to be mailed to or served on the adverse claimant, his solicitor, attorney or agent. 29 V. c. 25, s. 14.

Notice to adverse claim.



Further publication or service of notice

**17.** In all cases the Judge may require from time to time any further publication to take place, or any other notice to be mailed or served that he deems necessary before granting the certificate. 29 V. c. 25, s. 15.

Adverse claimants to file statements.

**18.** Any person having an adverse claim, or a claim not recognized in the applicant's petition, may at any time before the certificate of title is granted, file and serve on the applicant, his solicitor or agent, a short statement of his claim, which may be according to the form (No. 3) given in the Schedule to this Act 29 V. c. 25, s. 19.

Verification.

**2.** The said claim shall be verified by an affidavit to be filed therewith. 29 V. c. 25, s. 20.

In case of contest, Judge may decide or refer the case.

**19.** In case of a contest, the Judge may either decide the question of title on the evidence before him, or may refer the same or any matter involved therein to the full Court, or to any mode of investigation which is usual in other cases, or which he deems expedient, and may defer granting the certificate until afterwards, according as the circumstances of each case render just or expedient. 29 V. c. 25, s. 21.

Security for costs.

**20.** The Judge may, at any stage of the cause, order security for costs to be given by the applicant for a certificate, or by any person making any adverse claim. 29 V. c. 25, s. 22.

Payment of costs.

**21.** The Judge may order costs either as between party and party, or as between solicitor and client, to be paid by or to any person party to any proceeding under this Act, and may give directions as to the fund out of which any costs shall be paid. 29 V. c. 25, s. 23.

Withdrawal application.

**22.** The petitioner may by leave of the Judge withdraw his application at any time before final adjudication, on payment of all costs incurred in the investigation, either by himself or by any adverse claimant. 29 V. c. 25, s. 24.

Petition may be referred to Master or counsel.

**23.** With a view of expediting investigations, and subject to any General Orders in this behalf, the Judge, if he sees fit, may refer any petition presented under this Act to the Master or a Deputy Master or any other officer of the said Court, or to any counsel named by the Judge, and in such case the referee shall proceed as the Judge himself should do under this Act, had the reference not been made, and shall have the same powers. 29 V. c. 25, s. 25.

Judge may require report of counsel.

**24.** The Judge may also refer any title to counsel named by the Judge, for a preliminary report or examination, and may call for the assistance of counsel in any other way and for any other purpose that may tend to the dispatch of business under this Act. 29 V. c. 25, s. 26.

**25.** The Judge may give one certificate of title, comprising all the land mentioned in the petition, or may give separate certificates as to the title of separate parts of the land. 29 V. c. 25, s. 27. One certificate or several.

**26.** Every claim of title under this Act shall be presumed to be subject to the following exceptions and qualifications, unless the petition for investigation expressly alleges the contrary: Claims of titles to be presumed to be made with certain exceptions.

(a.) The reservations (if any) contained in the original grant from the Crown;

(b.) Any municipal charges, rates or assessments theretofore imposed for local improvements, and not yet due and payable;

(c.) Any title or lien which, by possession or improvements or other means, the owner or person interested in any adjoining land has acquired to or in respect of the land mentioned in the certificate;

(d.) Any lease or agreement for a lease, for a period yet to run, of not exceeding three years, where there is actual occupation under the same. 29 V. c. 25, s. 17.

2. If however, the applicant desires the certificate to declare the title to be free from the said particulars, or any of them, his petition shall so state, and the investigation shall proceed accordingly. 29 V. c. 25, s. 18. But claim may be without exceptions

**27.** The certificate of title shall be according to the form (No. 4) given in the Schedule to this Act, and shall be under the seal of the Court, and shall be signed by one of the Judges and by the Registrar of the Court, and the same and the Schedule (if any) thereto, or a duplicate or counterpart of the same shall be registered in full, both in the Court of Chancery, and in the Registry Office of the County or other Registration Division where the land lies, without any further proof thereof. 29 V. c. 25, s. 28. Form of certificate of title.

**28.** A memorandum or certificate of the registration may be endorsed on the certificate of title or on any counterpart or certified copy thereof thus:— Registry of certificate.

“Registered in Chancery. 18 . Book ,  
Page ,  
A. H.,  
Clerk of Records and Writs.

Or,

“Registered in the Registry Office for the County (or as the case may be), of Book , Page , (Date)  
A. C. Registrar,”

and a memorandum or certificate so signed shall be evidence of the registration mentioned therein. 29 V. c. 28, s. 29.

Effect of certificate of title.

**29.** The certificate of title when so sealed, signed and registered, shall be conclusive at Law and in Equity, and the title therein mentioned shall be deemed absolute and indefeasible, from the day of the date of the certificate, as regards Her Majesty and all persons whatever, subject only to any charges or incumbrances, exceptions or qualifications mentioned therein, or in the Schedule thereto, and shall be conclusive evidence that every application, notice, publication, proceeding, consent and act whatsoever, which ought to have been made, given and done previously to the granting of the certificate, has been made, given and done by the proper parties. 29 V. c. 25, s. 30.

Certified copy of certificate to be evidence.

**30.** After a certificate of title is duly registered, a copy of the certificate, purporting to be signed and certified as such copy by the Registrar in Chancery, or by the Registrar for the County or other Registration Division in which the land lies, shall be admissible evidence of the certificate for all purposes whatsoever, without further evidence of such copy, and without accounting for the non-production of the certificate. 29 V. c. 25, s. 31.

Conveyance by the Court in case of Chancery sale.

**31.** In case of a Chancery sale the Court of Chancery, if it thinks fit, may investigate the title with a view to granting an indefeasible title, and in that case, a conveyance executed to the purchaser, under the seal of the Court and purporting to be under the authority of this Act, shall have the same conclusive effect as a certificate. 29 V. c. 25, s. 32.

Form.

**2.** The conveyance may be according to the form (No. 5) given in the Schedule to this Act. 29 V. c. 25, s. 33.

Where an indefeasible title is contracted for.

**32.** Where a decree is made for the specific performance of a contract for the sale of an estate, and it is part of the contract that the vendor shall have an indefeasible title, the Court shall make the like investigation, and the conveyance may be according to the form (No. 5) aforesaid. 29 V. c. 25, s. 34.

#### JUDICIAL INVESTIGATION OF PARTICULAR FACTS AFFECTING TITLES.

Right to judicial investigation of some fact, which may affect a title.

**33.** In case any person domiciled in Ontario, or claiming any real estate in Ontario, desires to establish, not his title to some specific property, but generally that he is the legitimate child of his parents, or that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or that his own marriage was a valid marriage, or that he is the heir, or one of the co-heirs of any person deceased or that he is a natural born subject of Her Majesty, he may, if the said Court thinks fit, have any of the said matters judicially investigated and declared. 29 V. c. 25, s. 35.

**34.** The application may be by a short petition stating the object of the application. 29 V. c. 25, s. 36.

**35.** The petition shall be supported by an affidavit of the applicant verifying the statements of the petition, and stating further that his claim is not disputed or questioned by any person; or if his claim is to his knowledge disputed or questioned, he shall set forth the facts in relation to such dispute or question, and shall depose that he is not aware of any dispute or question except what he has set forth, and he shall state in the affidavit such other facts as may satisfy the Court of the propriety of proceeding with the investigation. 29 V. c. 25, s. 37.

How the petition must be supported.

**36.** The investigation shall be made by the same judicial authority, and in the same manner, and on the same evidence, and the same publication or other notice shall be required, and the same proceedings generally shall be had, and the certificate granted on such investigation shall be registered in the same way, and may be proved by the same evidence, as nearly as may be respectively, as in cases under the second section of this Act. 29 V. c. 25, s. 38.

Investigation, proof, &c., in such case.

**37.** Such certificate when registered shall be conclusive and indefeasible in favour of the party on whose application the same was granted, and all persons claiming by, from, through or under him, and shall be *prima facie* evidence in favour of all other persons, and against all persons of the truth of the fact therein declared. 29 V. c. 25, s. 39.

Effect of certificate.

**38.** A separate book shall be kept in Chancery for the registering of these and other certificates of title, and conveyances given under this Act, and the certificates and conveyances registered therein shall be numbered in order, and convenient indexes to the book shall be kept in such form as the Court from time to time directs. 29 V. c. 25, s. 40.

Register to be kept.

**39.** In case any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceeding under this Act, is a minor, an idiot or a lunatic, the guardian of the minor, or committee of the estate of the idiot or lunatic, may make such application, give such consent, do such act, and be party to such proceeding as such person might, if free from disability, have made given, done or been party to, and shall otherwise represent such person for the purposes of this Act; and if the minor has no guardian, or the idiot or lunatic no committee of his estate the Court or Judge may appoint a person with like power to act for the minor, idiot or lunatic; but a married woman shall, for the purposes of this Act, be deemed a *feme sole*. 29 V. c. 25, s. 41.

Where any party is a minor, lunatic, etc.

Married women.



Re-investigation at the instance of any party aggrieved.

**40.** After a certificate is granted in regard to any of the matters investigated under this Act, any party aggrieved thereby may, on petition, and after satisfactorily accounting for his delay, have the title or claim re-investigated on such terms as may be just. 29 V. c. 25, s. 42.

But those who have purchased, &c., in the mean time not to be affected.

**41.** No proceeding on such petition shall affect the title of any person who, in the meantime, and after the registration of the certificate, has acquired, by sale, mortgage or contract, for valuable consideration, any estate or interest in the land specified in the certificate of title, or (in case the certificate was under the thirty-third section of this Act.) in any land or other property, the title to which was derived from, through or under the person named in the certificate, in the character which is thereby declared to belong to him. 29 V. c. 25, s. 43.

#### APPEALS.

Appeals.

**42.** An appeal shall lie from any order or decision of a Judge under this Act to the full Court, or to the Court of Appeal, and from any order or decision of the full Court to the Court of Appeal, as in the case of orders, decrees, rule and judgments in suits. 34 V. c. 11, s. 3. See 36 V. c. 8, s. 44; 39 V. c. 7, s. 52, & *Sched. A*.

#### MISCELLANEOUS.

No objections to proceedings to establish title that petitioner should first have sued at law.

**43.** Where a petition is filed under this Act, no objection thereto shall be allowed upon the ground that the petitioner should first have sued at law, and if it appears upon the determination of the investigation that the petitioner is entitled to the possession of the real property the title to which is sought to be quieted under this Act, he may obtain an order against the respondent for the delivery of possession thereof, and writs of execution shall issue accordingly. 36 V. c. 8, s. 31.

Proceedings not abated by certain events.

**44.** Proceedings under this Act shall not abate or be suspended by any death or transmission or change of interest, but in any such event the Court or Judge may require notices to be given to persons becoming interested, or may make any order for discontinuing, or suspending, or carrying on the proceedings, or otherwise, in relation thereto, as under the circumstances may be just. 29 V. c. 25, s. 44.

Proceedings not void for want of form.

**45.** No petition, order, affidavit, certificate, registration or other proceeding under this Act shall be invalid by reason of any informality or technical irregularity therein, or of any mistake not affecting the substantial justice of the proceeding. 29 V. c. 25, s. 45.

How this Act shall be construed.

**46.** The foregoing provisions of this Act shall be so construed and carried out as to facilitate, as much as possible, the obtaining of indefeasible titles by the owners of estates in land,

through the simplest machinery, at the smallest expense, and in the shortest time, consistent with reasonable prudence in reference to the rights or claims of other persons. 29 V. c. 25, s. 47.

47. If in the course of any proceeding before the Court under this Act, any person acting either as principal or agent, knowingly and with intent to deceive, makes, or assists, or joins in, or is privy to the making of any material false statement or representation, or suppresses, conceals, or assists, or joins in, or is privy to the suppression, withholding, or concealing from the Court any material document, fact or matter of information, any order or declaration of title obtained by means of such fraud or falsehood, shall be null and void for or against all persons other than a purchaser for valuable consideration without notice. 29 V. c. 25, c. 48.

Certificate to be void if obtained by fraud.

Exception.

#### OFFENCES AND PENALTIES.

[Sections 48, 49 and 50 of 29 V. s. 25, are as follows:—

48. If in the course of any proceeding under this Act, any person acting either as principal or agent, shall, knowingly and with intent to deceive, make, or assist or join in or be privy to the making of, any material false statement or representation, or suppress, conceal or assist or join in or be privy to the suppressing, withholding or concealing from the Court any material document, fact or matter of information, every person so acting shall be deemed to be guilty of a misdemeanor, and on conviction shall be liable to be imprisoned in the Provincial Penitentiary for a term not exceeding three years, and not less than two years, or to be imprisoned in any other prison or place of confinement for any term less than two years, and in the latter case with or without hard labour, or to be fined such sum as the Court by which he is convicted shall award; any order or declaration of title obtained by means of such fraud or falsehood, shall be null and void for or against all persons other than a purchaser for valuable consideration without notice.

Punishment of persons obtaining certificates under this Act by fraud.

49. If in the course of any proceeding before the Court, under the Act, any person shall fraudulently forge or alter, or assist in forging or altering, any certificate or other document relating to such land or the title thereto, or shall fraudulently offer, utter, dispose of or put off any such certificate or other document, knowing the same to be forged or altered, such person shall be guilty of felony, and upon conviction shall be liable, at the discretion of the Court by which he is convicted, to be imprisoned in the Provincial Penitentiary for life, or for any term not less than three years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, and in the latter case with or without hard labour.

Forging or fraudulently altering certificate, etc., to be felony.

Punishment.

50. No proceeding or conviction for any act hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such act may be entitled to at Law or in Equity, against the person who has committed such act.]

Conviction not to affect other remedy.

48. No proceeding or conviction for any contravention of section forty-seven of this Act, or under section forty-eight of chapter twenty-five of the Acts passed in the twenty-ninth year of Her Majesty's reign, shall affect any remedy which any person

Conviction not to affect other remedy. 29 V. c. 25, s. 48.

aggrieved by such contravention may be entitled to, either at Law or in Equity, against the person who has committed the same. 29 V. c. 28, c. 50.

## GENERAL ORDERS.

Court may  
make General  
Orders for car-  
rying out this  
Act.

Rev. Stat.  
c. 49, ss. 45-50.

**49.** The said Court acting under the forty-fifth and following sections of "*The Administration of Justice Act*" may, from time to time, make General Orders for referring all or any applications under this Act, to any Master, Deputy-Master or other officer of the Court, or to any counsel or other person appointed by the Court, in that behalf, and to regulate the fees to be paid on such reference; and the referee shall have the same powers as a Judge within the limits prescribed by such General Orders; and the Court may also, from time to time, make other General Orders for the purposes of this Act, and for regulating the practice under the same; and all General Orders made in pursuance of this section may, from time to time, be rescinded or altered by the said Court. 29 V. c. 25, s. 52.

## SCHEDULE OF FORMS.

## FORM 1.

(Section 5.)

## FORM OF PETITION TO QUIET A TITLE.

*In Chancery.*

In the matter of *(the East half of lot No.                      in the*  
*Concession in the Township of                      or as the case may be, describing*  
*the property very briefly.)*

To the Honourable the Judges of the Court of Chancery.

The Petition of

SH EWETH,—

That your Petitioner is absolute owner in fee simple in possession *(or as the case may be)* of the following property *(describing it.)*

That there is no charge or other incumbrance affecting your Petitioner's title to the said land, *(except, &c., or that your Petitioner's title is subject only to the charges or incumbrances in the Schedule hereto mentioned, and that the only persons having or claiming any charge, incumbrance, estate, right or interest in the said land are set forth in the Schedule here-*

to annexed, and that the charge, incumbrance, estate, right or interest belonging to or claimed by each is therein set forth.) Your Petitioner therefore prays that his title to the said land may be investigated and declared under "*The Quieting Titles Act.*"

(Signed)

A. B.,

*or*

C. D., Solicitor for A. B.

## FORM 2.

(*Section 6.*)

### FORM OF CERTIFICATE OF AN APPLICATION UNDER THIS ACT.

I certify that an application has been made by \_\_\_\_\_ to the Court of Chancery, under "*The Quieting Titles Act*", for a certificate of title to the following lands [*stating them*].

A. H.,

*Clerk of Records and Writs.*

## FORM 3.

(*Section 18.*)

### FORM OF AN ADVERSE CLAIMANT'S STATEMENT.

In the matter of, &c. (*as in petition.*)

A. B., of, &c., claims to be the owner of the said land, &c., &c. (*stating very briefly the nature of the claim and the grounds of it.*) Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

(Signed)

A. B.,

*or*

C. D., Solicitor for A. B.

## FORM 4.

(*Section 27.*)

### FORM OF CHANCERY CERTIFICATE OF TITLE.

No. —

These are to certify under the authority of "*The Quieting Titles Act*," that A. B. \_\_\_\_\_ is the legal and





## CHAPTER 111.

## An Act respecting the Registration of Instruments relating to Lands.

## Interpretation :

"Instrument," "Land," "Will,"  
"County," s. 2.

## Registry Offices, ss. 3-5.

## Registrars and Deputies :

Appointment, security of, &c., ss.  
6-19.

Duties, s. 20-24.

## Books of Office :

To be furnished by County, ss.  
25-27.

Transfer of, upon alteration in  
limits of the Registration Divi-  
sion, ss. 28-31.

Copies of, when too old for use,  
s. 32.

Abstract Indexes, ss. 33-35.

Alphabetical Indexes, ss. 34, 35.

Instruments which may be regis-  
tered, ss. 36, 37.

Proof for registration, ss. 38-54.

Manner of registering, ss. 55-60.

## Registration of—

Crown grants, s. 61.

Orders in Council, s. 62.

Wills, s. 63.

Other instruments, s. 64.

Instruments executed before 1st

Jan. 1866, ss. 65, 66.

Discharges of mortgages, ss. 67-72.

By-laws, s. 73.

Effect of registering or omitting to  
register, s. 74-81.

Unregistered instruments after  
grant from the Crown void  
against subsequent registered  
purchaser, s. 74.

Wills not registered within twelve  
months after death, s. 75.

Deeds on sales of taxes not regis-  
tered eighteen months after  
sale, ss. 76, 77.

Registration as notice, ss. 78-80.

Equitable liens invalid as against  
registered instruments, s. 81.

Tacking not allowed as against  
registered instruments, s. 81.

Registration of plans, ss. 82-85.

Provisions for re-registration in case  
of loss, &c., of registry books, s. 86.

Defects in registration, ss. 87-90.

List of Patents to be furnished to  
Registrar, s. 91.

Offences, 29 V. c. 24, ss. 80-81,  
p. 1088.

Fees of Registrars, ss. 92-105.

Inspector of Registry Offices, ss.  
106-107.

Act not to aid construction of other  
Acts, s. 108.

HER MAJESTY, by and with the advice and consent of the Preamble  
Legislative Assembly of the Province of Ontario, enacts  
as follows :

1. This Act may be cited as "*The Registry Act.*"

Short title.

2. In the construction of this Act

(1. "Instrument" shall include every Crown grant; Order in Interpretation  
Council of the Dominion or of this Province; deed; conveyance; clause.  
mortgage; assignment of mortgage; certificate of discharge of "Instrument."  
mortgage; assurance; lease; bond; release; discharge; power of  
attorney, or substitution thereof, under which any such deed,  
conveyance, assurance, discharge of mortgage or other instru-  
ment is executed; bonds or agreements for sale or purchase of  
land; letter of attorney; will; probate of will; grant of ad-  
ministration with the will annexed; municipal road by-law;


certificate of any proceedings in any Court, decree of foreclosure, and every other certificate or decree of any Court affecting any interest in or title to land; also, certificates of payment of taxes granted under the corporate seal of the County, City, or Town by the Treasurer; every Sheriff's and Treasurer's deed of lands sold by virtue of his office; every contract in writing; every Commission and proceeding in Lunacy, Bankruptcy and Insolvency; and every other instrument whereby lands or real estate may be transferred, disposed of, charged, incumbered or affected, in any wise, in Law or in Equity, affecting land in Ontario.

"Lands." (2.) "Land" shall include lands, tenements, hereditaments, appurtenances and real estate.

"Will." (3.) "Will" shall include probate of will and exemplification, or notarial copies of probate of will and letters of administration with the will annexed, and any devise whereby lands are disposed of or affected.

"County." (4.) "County" shall include a Union of Counties, a City, Junior County and any part of a County or Counties set apart for judicial or registration purposes. 31 V. c. 20, ss. 1 & 33; 36 V. c. 17, s. 11; 36 V. c. 48, s. 195; 40 V. *Sched. A.* (124).

#### REGISTRY OFFICES.

In and for what places there shall be Registry Offices.  3. There shall be a separate Registry Office in every Riding, County, Union of Counties and City in Ontario wherein at present a separate Registry Office is established; and whenever any County is separated for judicial purposes from a Union of Counties, or a new County is formed and set apart for judicial purposes, there shall be a separate Registry Office established therein, by the Lieutenant-Governor in Council, which office shall be kept in the County Town in like manner as in other County Towns. 31 V. c. 20, s. 3.

Registry Office may be removed. 4. Wherever in any County or Riding the Registry Office appears to the Lieutenant-Governor in Council to be inconveniently situated, he may by proclamation order the same to be removed to any other place in the County or Riding. 34 V. c. 25, s. 1; 35 V. c. 28, s. 1.

County Councils to provide fire-proof offices and vaults. 5. For the safe-keeping and protection of all books, memorials, duplicates, and other instruments of whatever description, and plans, belonging to the office of Registrar, the Council of each and every County where, when this Act takes effect, or at any time thereafter, there are no safe and proper fire-proof offices and vaults provided by such Council, or where thereafter any Registry Office is established, shall provide, furnish and maintain, and keep in good repair, a safe and fire-proof registry office, fire-proof vaulted, upon a plan and on a site to be

approved of by the Lieutenant-Governor in Council, and shall thereafter keep the same furnished with fuel and furniture and in good repair, and Towns separated from Counties for municipal purposes, and Cities in which no separate Registry Offices exist, shall bear a rateable proportion of the expense thereof, based on the assessment of all the Municipalities within the jurisdiction of such County. 31 V. c. 20, s. 5.

## REGISTRARS.

6. Every Registry Office shall be kept by an officer to be called the Registrar. 31 V. c. 20, s. 6. Registrars.

7. The Lieutenant-Governor shall, as occasion may require, from time to time, by commission, under the Great Seal of the Province, appoint a fit person to the office of Registrar, and shall, in like manner, fill up any vacancy occurring by the death, resignation, removal or forfeiture of office by any Registrar, and every Registrar heretofore appointed or hereafter to be appointed shall hold office during pleasure only. 31 V. c. 20, s. 7. Registrars,  
how appointed,  
&c.

8. The Lieutenant-Governor may from time to time by Order in Council fix and determine the amount of the security to be given, as hereinafter mentioned, by each Registrar; but the amount of such security shall be not less than four thousand dollars nor more than ten thousand dollars. 36 V. c. 6, s. 3; 31 V. c. 20, *Form A*. Amount of  
security to be  
given.

9. Subject to the provisions of the twenty-fourth section of *The Act respecting Public Officers*, before any Registrar is sworn into office, such Registrar shall execute and enter into a joint and several covenant in duplicate with two or more sufficient sureties to be approved by the Lieutenant-Governor in Council for such amounts as may be fixed and determined by Order in Council in that behalf as aforesaid. Security to be  
given by  
Registrars.  
  
See Rev. Stat.  
c. 15, s. 24.

2. Such duplicate covenant may be in the form of Schedule A to this Act, or to the like effect; and to each of such covenants shall be attached an affidavit in the form of Schedule B to this Act, or to the like effect, made by each of the sureties therein mentioned.

3. One of such duplicate covenants with the affidavits appended shall be forthwith transmitted to the Provincial Secretary, to be by him retained, and the other duplicate covenant, with the affidavits aforesaid, shall be by such Registrar forthwith filed in the office of the Clerk of the Peace for the said County or Union of Counties where the same shall remain of record. 36 V. c. 6, s. 3; 39 V. c. 17, s. 7; 40 V. c. 7, *Sched. A*. (125).

10. The Registrar, whether appointed before or after the passing of this Act, may at any time be required by the In- New recogni-  
zances may be



required by  
Inspector.

spector of Registry offices, with the approval of the Lieutenant-Governor in Council, to execute new covenants in the form and to the effect hereinbefore provided, or to furnish other sureties as may be deemed expedient, or both, and in default thereof shall be subject to the penalties mentioned in section twenty-one of this Act. 31 V. c. 20, s. 10.

Copies may be  
obtained by  
any person.

**11.** Any person may examine and obtain a copy of the Registrar's covenant and affidavits on payment to the Clerk of the Peace of a fee for such copy and search, of one dollar, or for such search, of twenty-five cents. 31 V. c. 20, s. 11.

Sections 15-20  
of Rev. Stat.  
c. 15 to apply  
to securities.

**12.** Sections fifteen to twenty inclusive of *The Act respecting Public Officers*, shall apply to securities given by Registrars. 39 V. c. 17, s. 4. [See also sections 24-27 of *Rev. Stat. c. 15*.]

Lieutenant-  
Governor may  
require Regis-  
trars to give  
security.

**13.** The Lieutenant-Governor, upon the application of any County or City interested, or without such application if he thinks fit, may require any Registrar to give security in such form and for such an amount as the Lieutenant-Governor in Council determines to be sufficient to secure the due payment of any moneys payable by the Registrar to the County or City. 39 V. c. 17, s. 10.

Sureties of  
Registrars.

**14.** Any surety for a Registrar who is no longer disposed to continue his responsibility as such surety, may give notice thereof to the Registrar and to the Provincial Secretary, and in such case the Registrar shall, under penalty of forfeiture of his office, furnish the security of a new surety in lieu of the surety so giving notice, and shall complete and transmit the necessary covenant in that behalf to the Provincial Secretary within one month after such notice, and shall procure the approval of the new security within two months after the notice.

2. All accruing responsibility on the part of the person giving the notice shall continue until, and shall cease upon the perfecting and approval of the new security. 39 V. c. 17, s. 2.

Liability of  
Registrars and  
their sureties.

**15.** The Registrar and his sureties shall be jointly and severally liable on their covenant to any aggrieved person or persons to indemnify him or them against any damage or loss sustained by him or them, by or through the neglect or misconduct of the Registrar or his Deputy in the performance of the duties of his office, not exceeding the penalty named therein, but this provision shall not exempt the Registrar from any further responsibility to persons sustaining damage or loss as aforesaid. 31 V. c. 20, s. 12.

Registrar's  
oath of office.

**16.** Every Registrar, before he enters upon the execution of his office shall, before two or more Justices of the Peace for the County, take the oath given in the form of Schedule C to this

Act, which shall be transmitted to the Provincial Secretary, together with the recognizance and covenant aforesaid. 31 V. c. 20, s. 13.

**17.** The Registrar may nominate a Deputy or Deputies in his office, who may perform all the duties required under this Act, in the same manner and to the like effect as if done by the Registrar, such nomination shall be in writing, under the hand of the Registrar and sealed with his seal of office; and any Registrar may remove his Deputy and appoint another in his place whenever he thinks it necessary; and in case of the death, resignation, removal or forfeiture of office of the Registrar, the Deputy Registrar, or in case of there being more than one, the Senior Deputy Registrar, shall do and perform all and every act, matter, and thing necessary for the due execution of the said office, until a new appointment of Registrar is made by the Lieutenant-Governor. 31 V. c. 20, s. 14.

Appointment of Deputies.

Removal.

Power of Deputy in case of death or removal of Registrar.

**18.** Every Deputy Registrar before he enters on the execution of his office, shall, before two or more Justices of the Peace for the County take the oath or an oath to the like effect, appointed to be taken by the Registrar, which shall be forthwith transmitted in like manner. 31 V. c. 20, s. 15.

Deputy's oath of office.

**19.** No Registrar or Deputy Registrar or Clerk in his office shall, directly or indirectly, act as the agent of any corporation, society, company, person or persons investing money and taking securities on real estate within his County, nor shall such Registrar or Deputy Registrar, or Clerk in the office advise, for fee or other reward, or otherwise, upon titles of land, or practise as a Conveyancer, within his County, nor shall he carry on or transact within the Registry Office, any other business or occupation whatever, upon pain of forfeiture of office. 31 V. c. 20, s. 16.

Registrars or Deputies, etc., not to act as agents, for persons taking securities on real estate, or advise as to titles, etc., in their Counties.

#### DUTIES OF REGISTRARS.

**20.** Every Registrar shall reside within ten miles of his office, and shall keep his office at the place named in his commission or otherwise as appointed by the Lieutenant-Governor in Council, or by any Act in force respecting the same. 31 V. c. 20, s. 17.

Residence of Registrars.

**21.** If the Registrar in any manner misconducts himself in his office or neglects to perform his duty in every respect, as required of him by this Act, or commits or suffers to be committed any undue or fraudulent practice in the execution thereof, then such Registrar may, at the discretion of the Lieutenant-Governor in Council, be dismissed, and he shall, moreover, together with his sureties, so far as their covenants extend, be liable to pay all damages, with full costs of suit, to any person injured thereby, to be recovered by action in any of Her Ma-

Removal for misconduct

Liability of Registrar.

And of Deputy  
executing  
office.

jesty's Superior Courts of Record: and any Deputy executing the office of Registrar during any vacancy by death, resignation or forfeiture of the Registrar, shall, together with the sureties of the Registrar as far as their covenants extend, be for the same cause, and in like manner liable as the Registrar and his sureties are in this section declared to be liable. 31 V. c. 20. s. 18.

Hours of at-  
tendance at  
office.

**22.** The Registrar or his Deputy shall, for the discharge of all duties belonging to the said office attend at his office from the hour of ten in the forenoon until four in the afternoon, every day in the year, holidays excepted, and no instrument shall be registered by him on any holiday, nor shall any instrument be received for registration by him except within the hours above named. See 39 V. c. 25, s. 1; 39 V. c. 7, s. 2, *Sched. B.*

Holidays.

Registrars to  
make searches  
and abstracts,  
on certain con-  
ditions.

**23.** The Registrar shall, when required, and upon being tendered the legal fees for so doing, make searches and furnish copies and abstracts of or concerning all instruments or memorials registered, mentioning any lot of land as described in the patent thereof from the Crown, or any lot, described by number or letter on any registered map or plan, subsequent to the registration of such map or plan, or any part of a lot where the same is clearly described and can be identified in connection with the chain of title, or has been ascertained by actual survey; and of and concerning all wills, deeds, orders, or other instruments recorded, as may be requested of him in writing, if a writing is demanded by the Registrar; and he shall exhibit the original registered instrument, and also the Books of the office relating thereto when the party desires to make a personal inspection thereof, and shall give certificates of all copies and extracts under his hand of and concerning the parties to any of such documents, or of the witnesses to the same, or any other particulars which may be required, but no Registrar shall allow any such Book or instrument to be taken out of his possession or custody. 31 V. c. 20, s. 20.

To exhibit ori-  
ginals of in-  
struments, etc.

To certify  
copies, etc.

Registrar to  
have a seal of  
office, and for  
what purposes.

**24.** Every Registrar under this Act shall have a seal of office, to be approved of by the Inspector, and on request of any person or persons, body corporate or otherwise, shall furnish an exemplification or certified copy under his hand and seal of office, of any instrument or memorial deposited, registered, or filed, and kept in his office as such Registrar, which exemplification or certified copy shall be received as *prima facie* evidence in every Court of Law or Equity in Ontario, in the same manner and with the same effect as if the original thereof, in his office, was produced; and no Registrar or Deputy Registrar shall be required to produce any paper in his custody as such Registrar or Deputy Registrar, unless ordered by a Judge of some one of the Courts of Ontario, which order shall be produced to the officer issuing the subpoena requiring such production, and shall be by him noted in the margin of

Not bound to  
produce any  
papers, except  
on order of a  
Judge.

such subpœna, and signed by such officer. 31 V. c. 20, s. 21.  
*See also Rev. Stat. c. 62, s. 45.*

## BOOKS OF OFFICE.

**25.** The Treasurer of the County or City shall provide a fit and proper Registry Book for each Township, reputed Township, City, Town, and incorporated Village, the limits whereof are defined by law, and all index and other books required for the business of the said office; and all such Registry Books shall be as nearly as may be of the like size and description as those heretofore furnished, and shall continue to be of one uniform size or nearly so; and from the time such books are so provided and received at the Registry Office, the person who holds and executes the office of Registrar, shall keep and cause to be used for that purpose, a separate Registry Book for and of each Township, reputed Township, City, Town and incorporated Village, the limits whereof are defined by law, within the County, for which he holds office; and he shall also keep and cause to be used for that purpose a general Registry Book for the whole County, in which shall be recorded all wills and instruments in which there is a general devise, conveyance or power affecting lands without local description, and in which book an alphabetical index of the names of all the parties mentioned by name in such instrument shall also be kept; and whenever any Registrar requires a new Registry Book, or any other book for the use of his office, the same shall, on his application therefor, in writing, be furnished to him by the Treasurer, and all such books so furnished shall be paid for by the Treasurer out of the County or City funds as the case may be; and all such Books so furnished, used and kept, shall be deemed to be the property of Her Majesty for the use and benefit of the public; and the Inspector shall have power, when, for the dispatch of business, finds it necessary, by order in writing, to permit more than one Registry Book to be in use at the same time for the same Municipality. 31 V. c. 20, s. 22.

County Treasurer to provide proper books, one for each locality in the County.

General Registry book for the whole County, and for what purposes.

New books to be furnished when required

**26.** If the Treasurer refuses or neglects to furnish such Books within thirty days after such application therefor, the Registrar may provide the same and recover the costs thereof from the Municipality of the County or City so in default. 31 V. c. 20, s. 23.

If the Treasurer neglects to provide books.

**27.** The Judge of the County Court or Warden of the County, or Mayor of a City, shall give a certificate respecting each Registry or other Book, so furnished or provided, in the form of Schedule D to this Act, or to the like effect, and in case of refusal shall be liable to the same penalties as are imposed by section thirty of this Act. 31 V. c. 20, s. 24.

County Judge or Warden to certify books.

**28.** When any County, City, Town, incorporated Village, Township, reputed Township or place, making part of a County

Provision when any place is separ-



ated from a County, or detached from one County and attached to another

Certain books &c., to be transferred.

Statement to be furnished from general registry book.

Duty of Registrar receiving the same.

Penalty on Registrar refusing to make such transfer, etc.

Registrar removed or resigning to deliver up books, etc.

wherein a separate Registry Office is or has been kept, is or has been detached from some Union or County and set apart for registration purposes, or attached to or made part of another County for which a separate Registry Office is also kept, or where a separate Registry Office is established in any County or Junior County, according to the provisions of this Act, the Registrar of the County from which such localities are so detached, shall deliver to the Registrar of the County set apart, or of the County whereunto the same is attached, the Registry Book or Books and all other Books and Indexes which have been kept according to the statute, exclusively for such County, City, Town, incorporated Village, Township or reputed Township or place, the original memorials and original duplicates of all deeds, conveyances and wills of, or relating exclusively to, any lands within the same, and all other instruments, and all maps of Cities, Towns or Villages within the same, lodged according to law in his office; also a statement of all titles to lands within such detached localities, registered before separate Registry Books were kept for each Township or place, which statement shall contain a schedule of all memorials and other registered instruments which are so delivered, and also an exact copy of all memorials and other registered documents affecting such lands which, by reason of their relating to two or more localities cannot be delivered, and such statement shall also contain the same particulars with regard to wills, and shall be accompanied by indexes of names, and an index of lots, which shall be considered as a part of the said statement; such Registrar shall also furnish therewith a statement and copy of all wills and other instruments registered in any general Registry Book, and shall carefully compare such statement with the original entries in the Registry Books in his office, and endorse a certificate to that effect on the statement when furnishing the same; the Registrar receiving such Books, and his successors, shall keep the same among the Registry Books of his office, and deal with them in all respects in like manner as those originally supplied to and kept therein. 31 V. c. 20, s. 25.

**29.** Any Registrar who refuses to deliver such books, plans, duplicates, indexes or memorials, as aforesaid, within six months after demand in writing therefor, made upon him by the Registrar entitled to receive the same, shall upon conviction thereof, before any Court of Oyer and Terminer and General Gaol Delivery, forfeit his office, and be liable to a fine, in the discretion of such Court, not exceeding four hundred dollars. 31 V. c. 20, s. 26.

**30.** In case any Registrar is removed from or resigns his office, he shall forthwith deliver up all books, plans, instruments, memorials and indexes in his possession, as such Registrar to the person who is appointed Registrar in his stead, or to any other person who may be specially appointed in writing, by Her Majesty's Attorney-General of Ontario to receive the same,

and if such Registrar refuses to do so, the Attorney-General may direct the Sheriff of the County to seize and take immediate possession of the same wheresoever found, and the Registrar so offending shall be liable to a fine, in the discretion of the Court, not exceeding two thousand dollars, and to any term of imprisonment, if the Court thinks fit to impose it, in addition to the fine, not exceeding one year. 31 V. c. 20, s. 27.

**31.** All Registrars who receive from another County original instruments, memorials, and statements of title therewith, shall so soon as practicable, make full and complete copies of all such memorials and instruments in proper Books, and in the same order and relation in which they were originally registered, inserting in the margin of the Registry Books, opposite to each memorial or instrument, the number thereof, and the particular time at which such memorial or instrument was originally recorded, as endorsed on the back thereof by the Registrar or his Deputy, at the time of the original registration thereof. 31 V. c. 20, s. 28.

**32.** Wherever, in any Registry Office, any Book from age or use, is becoming obliterated or unfit for future use, the Inspector shall, by directions in writing under his hand, order such Book to be re-copied in a Book of like description as that required under the twenty-fifth section of this Act, so far as the same can be deciphered by examination thereof, and of the original memorials relating thereto, which Book having the order of such Inspector for the copying thereof, under the hand of the Inspector, inserted at the beginning of the Book, and having the affidavit or declaration of the Registrar or his Deputy, at the end of such Book, to the effect that such Book so copied is a true copy of the original Book of which it purports to be a copy, shall be to all intents and purposes, accepted and received as the original Book, and as *prima facie* evidence that such copy is a true copy of the original Book; every such original Book shall, nevertheless, be carefully preserved, notwithstanding a copy thereof has been made, and every such Registrar or his Deputy, shall be obliged to make his affidavit or declaration in this section mentioned, and the Inspector shall have power to order any Book which is out of repair and unfit for use to be repaired in such manner as he thinks necessary; and he shall also have power to order plans and maps deposited in any Registry Office, to be copied, mounted or bound, to be preserved in such manner as he thinks necessary. 31 V. c. 20, s. 29.

**33.** The Registrar shall, in a proper book kept for the purpose, and called the "Abstract Index," keep entered under a separate and distinct head each separate lot or part of a lot of land as originally patented by the Crown, or as defined on any plan of the subdivision of any such land into smaller sections or lots after such plan has been filed in the Registry Office; and every in-

Proceedings in case of refusal.

Registrars revising original memorials, etc, from another County.

When any book becomes unfit for further use copy to be made.

Original to be preserved.

Repair of books, maps, &c.

Each Registrar to make an abstract index to lots.

What it shall contain.

strument registered on and after the first day of January, one thousand eight hundred and sixty-six, mentioning any such parcel or lot of land or other subdivision, and the names of every person to each instrument, and the nature of it, (such as a "Will," "Grant," "Lease," "Power of Attorney,") the numbers of registration of all such instruments, for each Municipality in which the land mentioned therein is situate, and the day, month, and year, of their registration, and the consideration or mortgage money mentioned therein, shall, by the Registrar, in addition to all entries by law required, be entered in regular order and rotation under the proper heading of each such separate parcel or lot of land mentioned in such instrument, and the Book or Books, to be so kept by each Registrar, for the purpose of making the said entries, shall be in the form or nearly so of Schedule M to this Act. 31 V. c. 20, s. 30.

Also an alphabetical index of names for each locality.

**34.** Every Registrar shall also, for each Township, City, Town, and incorporated Village, keep an Alphabetical Index of names, exhibiting in columns the number of each instrument, the names of the different grantors, and the names of the grantees, according to the form of Schedule N to this Act. 31 V. c. 20 s. 31.

Indexes to be completed as to registrations before the passing of this Act.

**35.** In order to make every Index required by this Act complete, it shall be the duty of each Registrar in all cases when the Abstract or Alphabetical Indexes have not been heretofore kept substantially as herein provided, to enter all the registrations affecting lands, which may have been recorded before the passing of this Act, in the same manner and in the like books as provided in the thirty-third and thirty-fourth sections of this Act. 31 V. c. 20, s. 32.

#### INSTRUMENTS THAT MAY BE REGISTERED.

Instruments which may be registered.

**36.** Subject to the provisions of the next section, all instruments mentioned in the second section of this Act may be registered. 31 V. c. 20, s. 33.

What leases must be registered.

**37.** This Act shall not extend to any lease for a term not exceeding seven years, where the actual possession goes along with the lease; but it shall extend to every lease for a longer term than seven years. 31 V. c. 20, s. 69.

#### PROOF FOR REGISTRATION.

Facts to be proved.

**38.** In the case of an instrument other than a will, grant from the Crown, Order in Council, by-law or other instrument under the seal of any Corporation, or certificate of judicial proceedings, a subscribing witness to such instrument shall in an affidavit setting forth his name, place of residence, and addition, occupation or calling, in full, swear to the following facts:

(a) To the execution of the original and duplicate if any there be;

(b) To the place of execution;

(c) That he knew the parties to such instrument, if such be the fact; or that he knew such one or more of them, according to the fact;

(d) That he is subscribing witness thereto.

2. The affidavit may be in the form of Schedule E to this Act, or to the like effect. 31 V. c. 20, s. 38. Form of affidavit.

39. The said affidavit shall be made on the said instrument, or securely attached thereto, and such instrument and affidavit shall be copied at full length in the Registry Book. 31 V. c. 20, s. 39. Affidavit to be registered.

40. Where any instrument is executed by one or more grantors, but not by all of them, in presence of the same witness or witnesses, and by one or more of the other parties thereto in presence of another witness or other witnesses, then and in such case the witness or one of the witnesses, whether the same be so executed in the same or in different places, shall make an affidavit in accordance with the thirty-eighth section as to each separate and distinct execution of the instrument before the same is registered. 31 V. c. 20, s. 40. When different witnesses see different grantors execute

41. No registration under this Act of any instrument shall be deemed or adjudged void, or defective by reason of the name, place of residence, addition, occupation or calling of the subscribing witness thereto not being set forth in full, or being improperly or insufficiently given or described in the affidavit mentioned in and required by section thirty-eight, nor by reason of any clerical error or omission of a merely formal or technical character in such affidavit. 36 V. c. 17, s. 2. Certain defects in affidavit not to invalidate registration.

42. Any instrument may be registered under this Act, notwithstanding that the Christian name or names of the subscribing witness making such affidavit is or are only set forth therein by initial letter or letters, or abbreviation or abbreviations, and not in full. 36 V. c. 17, s. 3. Deeds may be registered notwithstanding Christian name of witness not set forth.

43. Every affidavit made under the authority of this Act shall be made before some one of the following persons: Before whom to be sworn.

1. If made in Ontario, it shall be made before—

The Registrar or Deputy Registrar of the County in which the lands lie,

Or, before a Judge of any of the Superior Courts of Law or Equity,

In Ontario.



- Or, before any Judge of a County Court within his County,
- Or, before a Commissioner authorized by any of the Superior Courts to take affidavits. 31 V. c. 20, s. 41 (1).
- Or before any Justice of the Peace for the County in which such affidavit is sworn. 39 V. c. 25, s. 3.

In Quebec.

2. If made in Quebec, it shall be made before—
  - A Judge or Prothonotary of the Superior Court or Clerk of the Circuit Court,
  - Or, before a Commissioner authorized under the laws of Ontario to take, in Quebec, affidavits in and for any of the Courts of Record in the Province of Ontario,
  - Or, before any Notary Public in Quebec, certified under his official seal. 31 V. c. 20, s. 41, (2) ; 34 V. c. 14, ss. 2. & 6 ; C. S. C. c. 79, s. 3.

In United Kingdom.

3. If made in Great Britain or Ireland, it shall be made before—
  - A Judge of the Supreme Court of Judicature in England, or of the Court of Session or the Justiciary Court in Scotland, or of the High Court of Chancery, or of the Court of Queen's Bench, Common Pleas, or Exchequer, in Ireland,
  - Or, before a Judge of any of the County Courts within his County,
  - Or, before the Mayor or Chief Magistrate of any City, Borough or Town corporate therein, and certified under the common seal of such City, Borough or Town corporate,
  - Or, before a Commissioner authorized to administer oaths in the Supreme Court of Judicature in England or before a Commissioner authorized by the laws of Ontario to take, in Great Britain or Ireland, affidavits in and for any of the Courts of Record in the Province of Ontario,
  - Or, before any Notary Public certified under his official seal. 31 V. c. 20, s. 41 (3) ; 34 V. c. 14, ss. 2, 4 & 6 ; 40 V. c. 7, *Sched. A.* (126).

In a British Colony.

4. If made in any British Colony or Possession, it shall be made before—
  - A Judge of a Court of Record, or of any Court of Supreme Jurisdiction in the Colony,
  - Or, before the Mayor of any City, Borough or Town corporate, and certified under the common seal of such City, Borough or Town,
  - Or, before any Notary Public, certified under his official seal,
  - Or, if made in the British Possessions in India, before any Magistrate or Collector, certified to have been

such under the hand of the Governor of such Possession,

Or, before a Commissioner authorized by the laws of Ontario to take, in such British Colony or Possession, affidavits in and for any of the Superior Courts of the Province of Ontario. 31 V. c. 20, s. 41 (4); 34 V. c. 14, ss. 2, 4 & 6.

5. If made in any Foreign Country, it shall be made before— In a Foreign Country.  
The Mayor of any City, Borough or Town corporate of such country, and certified under the common seal of such City, Borough or Town corporate,  
Or, before any Consul, Vice-Consul, or Consular Agent of Her Majesty, resident therein,  
Or, before a Judge of a Court of Record or a Notary Public, certified under his official seal,  
Or, before a Commissioner authorized by the laws of Ontario to take, in such country, affidavits in and for any of the Courts of Record of the Province of Ontario. 31 V. c. 20, s. 41 (5); 34 V. c. 14, ss. 2, 4 & 6.

44. Every subscribing witness shall be compellable, when necessary, by order of a Judge of any of the Superior Courts or County Courts, to make affidavit or proof of the execution of any instrument for the purpose of registration under this Act, and to do all other acts necessary for the same purpose, upon being paid or duly tendered his reasonable expenses therefor. 31 V. c. 20, s. 42. Witnesses compellable to make affidavit.

45. The proof may be either by affidavit or by affirmation or declaration, when by the law of the country where such proof is made, an affirmation or declaration may be substituted for an affidavit; and the Registrar shall receive such instruments so proved without any other or further proof of their due execution. 31 V. c. 20, s. 43. Affirmation or declaration in certain cases.

46. None of the persons authorized to take affidavits by this Act shall take any affidavit of the execution of any instrument, in case he is a party to such instrument; nor shall any such affidavit for the proof of any instrument executed after the first day of January, one thousand eight hundred and sixty-six, be taken from any witness, unless such witness has subscribed his name in his own handwriting as such witness. 31 V. c. 20, s. 44. Parties not to take affidavits. Witness to sign.

47. Where the witnesses to any instrument are dead or are out of this Province, or have become insane, idiotic, imbecile, or of unsound mind or understanding, and whether so found by inquisition or not, or wherever any instrument, not by law requiring an attesting or subscribing witness thereto, has been executed without any attesting or subscribing witness thereto, or in case it is proved to the satisfaction of the Judge Witnesses insane, absent, etc.

in this section mentioned that the place of abode or residence of such first above-mentioned witnesses is unknown, any person who is or claims to be interested in the registration of the instrument, may make proof before the Judge of any County Court in Ontario, of the execution of such instrument, and upon a certificate (according to the form of Schedule F to this Act) endorsed on such instrument and signed by such Judge, that the Judge is satisfied by the proof adduced of the due execution of the instrument, the Registrar shall register such instrument and certificate. 31 V. c. 20, s. 45; 36 V. c. 17, s. 1. 39 V. c. 25, s. 5.

Seal of Court or seal of Corporation with signature of officer to suffice for registration.

**48.** The seal of any Court of Record affixed to any instrument in writing, of itself, and the seal of any Corporation affixed to any such instrument with the signature of the Secretary or presiding officer thereof, shall be sufficient evidence of the due execution of the instrument by the Judge, Registrar, Clerk or officer of the Court signing the same, or by the Corporation respectively, for all purposes respecting the registration thereof, and no further evidence or verification of such execution shall be required for the purpose of registration. 31 V. c. 20, s. 46.

Certificates in Chancery for registry. Who may sign.

**49.** Certificates of Chancery proceedings for registration may be signed by the Registrar of the Court, or by the Clerk of Records and Writs, or by a Deputy Registrar, or by any other official authorized by the Court to sign the same; and such certificates may be under the seal of the Court, or under the seal of office (if any) of the officer signing the same. 37 V. c. 7, s. 51; 40 V. c. 7, *Sched. A* (48). *See also Rev. Stat. c. 40. s. 89.*

Registrar to deliver certified copy of power of attorney registered.

**50.** Where a power of attorney or any substitution thereof is registered, the Registrar shall deliver a certified copy or copies of such power or substitution as may be required of him, and of all the documents aforesaid connected with or relating to the same, under his signature and seal of office, in which certificate he shall declare the time, place and other particulars of registration as in other cases under this Act, and he shall also declare that the copy, which he so delivers, is a true copy of the power or substitution, and of all the other documents connected with or relating to the same of which they respectively purport to be copies, and that the originals have been duly deposited in his office according to the statute in that behalf. 31 V. c. 20, s. 47.

Use and effect of such certified copy.

**51.** Every such certified copy where the original power or substitution is deposited as aforesaid, may be registered in any other Registry Office, by deposit thereof, without production of the original power or substitution, and without proof of any kind other than the production of the copy so certified as aforesaid. 31 V. c. 20, s. 48.

**52.** Every such certified copy of a power of attorney or substitution, shall be received in all cases in place of the original as *prima facie* evidence of the original power or substitution and of due execution, provided that notice has been given in the manner set forth in section forty-six of "*The Evidence Act.*" 31 V. c. 20, s. 49.

To be *prima facie* evidence.

Rev. Stat. c. 62, s. 46.

**53.** Where it is desired to register an instrument other than a will in more than one Registry Office, the same may be registered in like manner as is provided as to powers of attorney by sections fifty and fifty-one of this Act. 39 V. c. 25, s. 6.

Registry of instrument in several Registry offices.

**54.** Every notarial copy of any instrument executed in the Province of Quebec, the original of which is filed in any notarial office according to the law of Quebec, and which cannot therefore be produced in Ontario, and every prothonotarial copy of any instrument executed in Quebec shall be received in lieu of and as *prima facie* evidence of the original instrument, and may be registered and treated under this Act for all purposes as if it were in fact the original instrument, and such notarial or prothonotarial copy shall be registered without any other or further proof of the execution of the same, or of the original thereof, with the seal of the Notary or Prothonotary attached. 34 V. c. 25, s. 2.

Registration of notarial copies of instruments executed in Quebec.

#### MANNER OF REGISTERING.

**55.** All instruments that may be registered under this Act shall be registered at full length, including every certificate and affidavit, excepting certificates by the Registrar, accompanying the same, upon and by the delivery to the Registrar of the original instrument, when but one is executed, or when such instrument is in two or more original parts, upon and by delivery of one of such parts. 31 V. c. 20, s. 52.

All registrations to be at full length and how.

**56.** In case one of two or more original parts is registered, the Registrar shall endorse upon each of such original parts a certificate of such registration, in the form of Schedule G to this Act, and such original, so certified, shall be received as *prima facie* evidence of the registration and of the due execution of the same. 31 V. c. 20, s. 53.

Instrument in two or more parts.

**57.** When any instrument includes different lots or parcels of land situate in different Municipalities in the same County, it shall only be necessary to furnish one duplicate original of such instrument, with an affidavit of its execution, and such duplicate original and affidavit shall be copied into the Registry Book pertaining to each City, Town, incorporated Village, Township, or place wherein the lands therein mentioned are situate, and the Registrar shall make the necessary entries and certificates accordingly. 31 V. c. 20, s. 54.

Instruments relating to several lots in different localities.



Registration  
of deeds con-  
taining lands  
situate in more  
than one  
County and of  
which no  
memorial has  
been executed.

**58.** Every deed executed prior to the fourth day of March, one thousand eight hundred and sixty-eight, affecting lands situate in more than one County, and of which said deed no memorial has been executed, may be recorded in any one of the Counties in which some of the lands are situate, upon proof made in accordance with this Act, and in the other Counties by deposit of a copy of every such deed and proof certified as is provided with respect to powers of attorney in sections fifty and fifty-one of this Act. 34 V. c. 26, s. 1.

Copying into  
Registry Book.

Filing away  
instrument and  
affidavit.

Certificate and  
its effect.

**59.** The Registrar or Deputy Registrar of the County in which the lands are situate shall, upon production to him of the original instrument, duplicate or other original part thereof, together with an affidavit of execution, enter the said instrument in the Registry Book, in the order in which it is received, and he shall file the same with such affidavit of execution, and he shall endorse a certificate on every such instrument and upon every duplicate of such instrument in the form of Schedule G to this Act, and shall therein mention the certain year, month, day, hour and minute in which such instrument is entered and registered, expressing also in what book the same has been entered, and the number of registration; and the said Registrar or his Deputy shall sign the said certificate when so endorsed, which certificate shall be allowed and taken as evidence of such respective registries in all Courts. 31 V. c. 20, ss. 55 & 56; 40 V. c. 7, *Sched. A.* (127).

Pages and in-  
struments to  
be numbered.

**60.** Every page of the Registry Book, and every instrument entered therein shall be numbered, and the certain year, month, day, hour, and minute of registration shall be entered in the margin of the Registry Books, in the form of Schedule H to this Act; and such entry shall be signed by the Registrar or his Deputy. 31 V. c. 20, s. 56.

#### HOW VARIOUS INSTRUMENTS ARE TO BE REGISTERED.

##### *Crown Grants.*

Crown Grants.

**61.** Grants from the Crown shall be registered by producing such grant or an exemplification thereof to the Registrar, with a true copy sworn to by any person who has compared the same with the original; and such copy shall be filed with the Registrar. 31 V. c. 20 s. 34; 40 V. c. 7, *Sched. A.* (128).

##### *Orders in Council.*

Orders in  
Council.

**62.** Orders of the Governor-General in Council or of the Lieutenant-Governor in Council may be registered in the Registry Office of the County or other Registration Division in which any land to which the Order in Council relates is situate by the deposit of a copy of the Order, certified by the Clerk of the Council. 40 V. c. 8, s. 40.

*Wills.*

**63.** Every will shall be registered at full length by the pro-  
duction of the original will and the deposit of a copy thereof,  
with an affidavit sworn to by one of the witnesses to the will,  
proving the due execution thereof by the testator, or by the  
production of probate or letters of administration with the will  
annexed, or an exemplification thereof, under the seal of any  
Court in this Province, or in Great Britain and Ireland, or in  
any British Province, Colony, or Possession, or in any foreign  
country having jurisdiction therein, and by the deposit of a copy  
of such probate or letters of administration, with an affidavit  
verifying such copy. 31 V. c. 20, s. 35; 39 V. c. 25, s. 2; 40  
V. c. 7, *Sched. A.* (129).

*Other Instruments.*

**64.** All instruments, other than grants from the Crown and  
wills, shall be registered by the deposit of the original instru-  
ment, or by the deposit of a duplicate or other original part  
thereof with all the necessary affidavits. 31 V. c. 20, s. 34.

Other instru-  
ments.

*Instruments executed before 1st January, 1866.*

**65.** The registration of all instruments executed before the  
first of January, one thousand eight hundred and sixty-six,  
may be made through memorials or by certificate or otherwise,  
as provided by the law in force prior to the Registry Act  
passed in the year one thousand eight hundred and sixty-five.  
31 V. c. 20, s. 36.

Registration of  
instruments  
executed be-  
fore 1st Jan.,  
1866.

**66.** The proof that would before the first day of January,  
one thousand eight hundred and sixty-six, have been sufficient  
for the registration of any instrument executed prior to the said  
date, shall be deemed sufficient for the registration hereafter of  
any such instrument; but in any such case the instrument  
shall be registered at full length, and the memorial and affidavit  
shall be deposited and filed in lieu of an original or duplicate.  
31 V. c. 20, s. 37.

Proof of regis-  
tration of in-  
struments ex-  
ecuted before  
1st Jan., 1866,  
etc.

*Discharges of Mortgages.*

**67.** Where any registered mortgage has been satisfied,  
the Registrar, on receiving a certificate executed by the mort-  
gagee, or if the mortgage has been assigned and such assign-  
ment registered, then executed by such assignee, or by such  
other person as may be entitled by law to receive the money  
and to discharge such mortgage, in the form of Schedule J, to  
this Act, or to the like effect, executed in the presence of one  
witness, and duly proven by the oath of the subscribing witness  
thereto, in the same manner as herein is provided for the proof  
of other instruments affecting lands, shall register the same, and

Satisfaction of  
mortgage how  
registered.

Entry in  
margin of  
register.

every affidavit attached thereto or endorsed thereon, at full length in its proper order, in the Registry Book, and shall number it in like manner as other instruments are required to be registered and numbered, and shall write in the margin of the register wherein the said mortgage has been registered, words to the following effect: "~~\_\_\_\_\_~~ See certificate purporting to be discharge signed by ~~\_\_\_\_\_~~ (naming the person who has executed the same), and see Registry number ~~\_\_\_\_\_~~ of such certificate ~~\_\_\_\_\_~~ Book (stating the same according to the fact)," and to such marginal entry the Registrar or his Deputy shall affix his name; and the same shall be deemed a discharge of such mortgage, and such certificate so registered shall be as valid and effectual in law as a release of such mortgage, and as a conveyance to the mortgagor, his heirs, executors, administrators, or assigns, or any person lawfully claiming by, through or under him or them, of the original estate of the mortgagor. 31 V. c. 20, s. 60.

Effect of such registration.

As to release of part only of lands mortgaged.

Portion released to be described.

**68.** In case the mortgagee or any assignee of the mortgagee desires to release or discharge part only of the lands contained in such mortgage, or to release or discharge only part of the money specified in the mortgage, he may do so by deed or by a certificate to be made, executed, proven, and registered in the same manner as in cases where the whole lands and mortgage are wholly released and discharged; and such deed or certificate shall contain as precise a description of the portion of lands so released or discharged as would be necessary to be contained in an instrument of conveyance for registration under this Act, and also a precise statement of the amount or particular sum or sums so released or discharged. 31 V. c. 20, s. 61.

How mortgages to married women discharged.

**69.** Where any registered mortgage of lands wherein a married woman happens to be a mortgagee therein, or whereof the assignee is a married woman, has been satisfied, the Registrar, on receiving a certificate, in the form of Schedule J, annexed to this Act, or to the like effect and executed as hereinafter mentioned shall register such certificate in the same manner as is provided by this Act for registering other certificates of discharge of mortgage, and such certificate shall be deemed a discharge of such mortgage to the same effect as any other certificates registered under this Act.

Mode of execution by married women.

Rev. Stat. c. 127.

2. Any such certificate given between the 19th day of December, 1868, and the 29th day of March, 1873, shall be deemed to have been sufficiently executed if it has been executed jointly by such married woman and her husband; and from and after the 29th day of March, 1873, and after the passing of this Act, execution either jointly by the married woman and her husband, or pursuant to "*The Married Woman's Real Estate Act*" shall be deemed sufficient execution; and it shall not be necessary to produce any certificate of such married woman having been examined before any of the persons authorized by the laws in force between said dates touching her consent thereto in any

wise. 32 V. c. 9, s. 1; 36 V. c. 18, s. 3. See 34 V. c. 24, s. 5; 36 V. c. 18, s. 14.

**70.** All certificates of discharge of mortgage and the registering thereof, executed by married women or registered previously to the nineteenth day of December, 1868, according to the terms of the Act passed in the thirty-second year of Her Majesty's reign, and chaptered nine, shall be as valid and binding as if done after the said date. 34 V. c. 24, s. 6.

All discharges of mortgage before 19th Dec. 1868, confirmed.

32 V. c. 9.

**71.** When a Sheriff, Bailiff of a Division Court or other officer, under a writ or warrant of execution against goods, seizes any mortgage belonging to the person against whose effects the writ or warrant has issued, on or affecting land in the Province of Ontario, the payment with or without suit in whole or in part to such Sheriff, Bailiff, or other officer by the mortgagor or any other person of the mortgage money thereby secured shall discharge such mortgage to the extent of such payment. 38 V. c. 17, s. 1.

On payment to the officer who has seized a mortgage on execution he may discharge the same in whole or in part.

2. After payment of such mortgage or any part thereof, the Sheriff, Bailiff or other officer shall, at the request and expense of the person requiring the same, give a certificate in the form or to the effect of Schedule K to this Act, under the hand and seal of office of such Sheriff or other officer, or under the hand of such Bailiff, and the seal of the Court of which he is Bailiff. 38 V. c. 17, s. 2.

Form of certificate of discharge.

3. Upon the written request of such Bailiff the Clerk of the Court shall affix to such certificate the seal of the Court; and he shall file the request of the Bailiff in his office. 38 V. c. 17, s. 2.

4. The execution of such certificate shall be proved by the same oath or affirmation, and in the same manner as is provided by law for the proof for registration of other instruments affecting lands, and the certificate, shall be registered in the same manner as other certificates of discharge of mortgages are registered. 38 V. c. 17, s. 3.

Proof of execution of certificate.

5. Every certificate so registered, if the same is of payment in full of such mortgage, shall be as valid and effectual in law as a release of such mortgage and as a conveyance to the mortgagor, his heirs, executors, administrators or assigns, or any person lawfully claiming by, through or under him or them, of the original estate of the mortgagor as if executed by the execution debtor. 38 V. c. 17, s. 4.

Effect of certificate on payment in full as re-conveyance of all.

6. Every certificate so registered, if the same is of payment of only a portion of such mortgage, shall be as valid and effectual in law as a release of such mortgage as to such portion, as if executed by the execution debtor. 38 V. c. 17, s. 5.

Effect as re-conveyance of part, on part payment.



Retrospective operation.

7. The provisions of this section shall extend and apply to all cases in which the seizure or payment took place before, as well as since the twenty-first day of December, one thousand eight hundred and seventy-four. 38 V. c. 17, s. 6.

Residence, &c., of witness to discharge of mortgage need not be given in attesting clause.

72. It shall not be necessary that the residence or occupation of the attesting witness to any certificate of discharge of mortgage be stated in the attestation clause thereof; nor shall any such certificate, registered before the twenty-ninth day of March, eighteen hundred and seventy-three, be invalid or inoperative by reason of the omission to state in such attestation clause the residence or occupation of any such attesting witness. 36 V. c. 17, s. 8.

### *By-Laws.*

By-laws hereafter made affecting real estate to be registered, and how.

73. Every by-law passed since the twenty-ninth day of March, eighteen hundred and seventy-three, or hereafter to be passed by any Municipal Council, under the authority of which any street, road, or highway has been or is opened upon any private property, shall before the same becomes effectual in law, be duly registered in the Registry Office of the County in which the land is situate; and for the purpose of registration a duplicate original of such by-law shall be made out, certified under the hand of the Clerk and the seal of the Municipality, and shall be registered without any further proof.

As to by-laws &c., heretofore made.

2. Every by-law passed before the said day, and every order and resolution of the Quarter or General Sessions passed before the said day, under the authority of which any street, road, or highway, has been opened upon any private property, may at the election of any party interested and at the cost and charges of such party or Municipality, be also duly registered, upon the production to the Registrar of a duly certified copy of such by-law under the hand of the Clerk of the Municipality and the seal of such Municipality, or by a duly certified copy of such order or resolution of such Quarter or General Sessions, given under the hand and seal of the Clerk of the Peace, as the case may be. 31 V. c. 20, s. 63; 36 V. c. 48, s. 445. *See also Rev. Stat. c. 174, s. 507.*

### EFFECT OF REGISTERING OR OMITTING TO REGISTER.

Unregistered instruments after grant from the Crown to be void against subsequent registered purchaser, &c.

74. After any grant from the Crown of lands in Ontario, and letters patent issued therefor, every instrument affecting the lands or any part thereof comprised in such grant shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without actual notice, unless such instrument is registered, in the manner herein directed, before the registering of the instrument under which such subsequent purchaser or mortgagee claims. 31 V. c. 20, s. 64; 36 V. c. 17, s. 7.

**75.** All wills or the probates thereof registered within the space of twelve months next after the death of the testator or testatrix, shall be as valid and effectual against subsequent purchasers and mortgagees, as if the same had been registered immediately after such death; and in case the devisee, or person interested in the lands devised in any such will, is disabled from registering the same within the said time by reason of the contesting of such will or by any other inevitable difficulty without his or her wilful neglect or default, then, the registration of the same within the space of twelve months next after his or her attainment of such will or probate thereof, or the removal of the impediment aforesaid, shall be a sufficient registration within the meaning of this Act. 31 V. c. 20, s. 65.

Wills not registered within a certain time to be void as against, &c.

**76.** Every deed made by a Treasurer or other officer for arrears of taxes shall be registered within eighteen months after the sale by such Treasurer or other officer; and all deeds of lands sold under process issued from any of the Courts of Law or Equity in Ontario, shall be registered within six months after the sale of such lands; otherwise the parties respectively claiming under any of such sales, shall not be deemed to have preserved their priority as against a purchaser in good faith who has registered his deed prior to the registration of such deed from the Treasurer or other officer. 31 V. c. 20, s. 58. *See also Rev. Stat. c. 180, s. 151*

Registry of deeds on sales for taxes.

Other sales under process of Court.

**77.** Where deeds for lands sold for taxes, or under process of law, before the fourth day of March, one thousand eight hundred and sixty-eight, have not been registered within one year after the said day, the parties respectively claiming under any such sales shall not be deemed to have preserved their priority as against a purchaser in good faith who has acquired priority of registration. 31 V. c. 20, s. 59.

Sales for taxes before 4th March, 1868.

**78.** The registration of any instrument, under this Act, or any former Act, shall, in Equity and at Law, constitute notice of such instrument, to all persons claiming any interest in such lands, subsequent to such registration, notwithstanding any defect in the proof for registration, but nevertheless it shall continue to be the duty of every Registrar not to register any instrument, except on such proof as is required by this Act. 31 V. c. 20, s. 66; 36 V. c. 17, s. 4.

Registry to be notice.

**79.** So far as by the last preceding section it is provided that notwithstanding any defect in the proof for registration the registration of an instrument shall constitute notice thereof, the said section shall only apply retrospectively from the twenty-ninth day of March, one thousand eight hundred and seventy-three, as to matters and facts within the meaning of section forty-one of this Act. 36 V. c. 17, s. 5.

Retrospective operation of last section.

**80.** Priority of registration shall prevail unless before such Actual notice.

prior registration there has been actual notice of the prior instrument by the party claiming under the prior registration. 31 V. c. 20, s. 67.

As to equitable  
liens, &c.

Tacking.

**81.** No equitable lien, charge, or interest affecting land shall be deemed valid in any Court in this Province, as against a registered instrument executed by the same party, his heirs or assigns; and tacking shall not be allowed in any case to prevail against the provisions of this Act. 31 V. c. 20. s. 68.

#### MISCELLANEOUS PROVISIONS.

##### *Plans.*

Registration of  
plans of divi-  
sion of lands  
into smaller  
parcels.

Scale of plan,  
and what to  
shew

Duty of Regis-  
trars there-  
after.

Instruments  
must conform  
to such plan.

Penalty for  
refusing such  
plan.

**82.** Wherever any land or original Town or Township lot has been surveyed or sub-divided into Town or Village lots, or other lots so differing from the manner in which such land or lot was surveyed or granted by the Crown, that the same cannot or is not, by the description given of it, easily and plainly to be identified, the person, corporation or company making such survey or sub-division, their heirs, executors, administrators or assigns, agents, attorneys or successors, shall within three months from the date of every such survey or sub-division, lodge with the Registrar a plan or a map of the same, on a scale of not less than one inch to every four chains, shewing the number of the Township or Town lots, and Range or Concession, the numbers or letters of Town or Village lots, and names of streets, with the astronomical or magnetic bearing of the same, and showing thereon all roads, streets, lots and commons within the same, with the courses and widths thereof respectively, and the width and length of all lots, and the courses of all division lines between the respective lots within the same, together with such information as will show the lots, concessions, tracts or blocks of land of the Township wherein the same is situate.

2. Every such map or plan, before being registered, shall be signed by the person or the chief officer of the corporation by whom or on whose behalf the same is filed, and shall also be certified by some Provincial Land Surveyor in the form of Schedule L to this Act; and thenceforth the Registrar shall keep an index of the lands described and designated by any number or letter on such map or plan, by the name by which such person, corporation or company designates the same in the manner provided by this Act; and all instruments affecting the land or any part thereof, executed after such plan is filed with the Registrar shall conform thereto, otherwise they shall not be registered.

3. In the case of refusal by such person, corporation or company, his or their executors, agents or attorneys, or successors, for two months after demand in writing for that purpose, to lodge the said plan or map when required by any person interested therein, or by the Inspector so to do, he or they shall incur a penalty of twenty dollars for each and

every calendar month the said map or plan remains unregistered, which penalty may be recovered by any person complaining, in any Division Court, in the County in which such lands are situated, in like manner as a common debt.

How recovered.

4. This section shall apply as well to lands already surveyed or subdivided as to those which may hereafter be surveyed or subdivided, subject to the next succeeding section.

31 V. c. 20, s. 75 ; 35 V. c. 29, s. 1 ; 39 V. c. 7, s. 15.

To what land this section applies.

83. In sales of lands under surveys or sub-divisions made before the fourth day of March, eighteen hundred and sixty-eight, where such surveys or sub-divisions so differ from the manner in which such land was surveyed or granted by the Crown that the parcel so sold cannot be easily identified, the plan or survey shall be registered within six months after the passing of this Act, if the plan or survey is still in existence and procurable for registration and filing under the next preceding section, and if it is not, a new survey or plan shall be made by and at the joint expense of the persons who have made such surveys or sub-divisions, and of all others interested therein, by some duly authorized Provincial Land Surveyor, as nearly as may be according to the proper original survey or sub-division, and the same when so made shall be filed as if under the next preceding section of this Act. 31 V. c. 20, s. 76.

When plan must be registered in case of lands subdivided before this Act.

How to be made.

84. In no case shall any plan or survey, although filed and registered, be binding on the person so filing or registering the same, or upon any other person, unless a sale has been made according to such plan or survey, and in all cases amendments or alterations of any such plan or survey may be ordered to be made, at the instance, of the person filing or registering the same or his assigns, by the Court of Queen's Bench or Common Pleas, or by the Court of Chancery, or by any Judge of any of the said Courts, or by the Judge of the County Court of the County in which the lands lie, if on application for the purpose duly made, and upon hearing all parties concerned, it be thought fit and just so to order, and upon such terms and conditions as to costs and otherwise as may be deemed expedient. 31 V. c. 20, s. 77 ; 39 V. c. 25, s. 4.

Plan not binding until some sale is made under it ; alterations in plan.

85. Where any incorporated Town or Village, or Village not incorporated, comprises different parcels of land owned at the original division thereof by different persons, and the same were not jointly surveyed and one entire plan of such survey made and filed in accordance with the eighty-second section of this Act, the Municipality of the Township within which such Village is situated, or the Municipality of such incorporated Town or Village, shall upon the written request of the Inspector or of any person interested, addressed to the Clerk of the Municipality, immediately cause a plan of such Town or Village to be made upon the scale pro-

Plans of towns or villages to be registered in certain cases.



How to be certified.

vided for under this Act, and to be registered in the Registrar's Office of the County within which such Village lies, which map or plan shall have endorsed thereon the certificates of the Clerk and Head of the Municipality and the Surveyor, that the same is prepared according to the directions of such Municipality, and in accordance with this Act; and to the said map or plan the corporate seal of the Municipality shall be attached.

Expense how paid.

2. The expense attending the getting up and depositing of such map or plan shall be paid out of the general funds of the Municipality, except in the case of unincorporated Villages where the same shall be paid by a special rate to be levied by assessment on all rateable property, comprised in the Village as described by metes and bounds in a by-law to be passed by the Municipality for the purpose of levying such rate; and in case of the refusal of such Municipality to comply with all the requirements of this section within six months next after being required in manner aforesaid so to do, such Municipality shall incur the same penalty, and the same shall be recoverable in the same manner, as provided in the eighty-second section of this Act. 31 V. c. 20, s. 78.

*Re-registration where Registry Books lost, &c.*

Provisions for re-registration in case registry books or papers are lost or destroyed.

86. In any case where the Registry Books and papers have been, before the fourth day of March, eighteen hundred and sixty-eight, lost or destroyed and the memorials are not forthcoming, upon proof being made to that effect before a Judge of any Court of Record in this Province to the satisfaction of such Judge as evidenced by a certificate under his hand, it shall be lawful for the Registrar for the County where the lands are situate to register the instrument upon production thereof, and no further proof shall be required by the Registrar than the original certificate of registration endorsed on such instrument; and any such instrument shall have priority according to the date of the original certificate.

2. The instrument shall be filed away by the Registrar and preserved with the records of his office, and in case memorials have not been copied into the Registry Books in their proper order, the Inspector may cause the same to be entered in proper Books to be procured for the purpose, in the same manner as provided in section twenty-five of this Act, and the Registrar shall be paid therefor in the same manner as under sub-section seven of the ninety-second section of this Act. 31 V. c. 20, s. 79.

*Defects in Registration cured.*

Registration made before 4th March, 1868, not to be deemed void for certain defects.

87. No registration of any deed or other instrument made before the fourth day of March, eighteen hundred and sixty-eight, shall be deemed or adjudged void by reason of the name or names, residence or residences, addition or additions of the witness or witnesses to such deed or instrument being improperly given or described in the registered memorial thereof,

or being either in part or altogether omitted from such memorial, or by reason of any clerical error or omission of a formal or technical character therein; and all registrations before the said day effected in separate Registry Books of unincorporated Villages, are hereby confirmed, where the law has been otherwise complied with; and such separate Registry Books shall be taken and held to form part of the Registry Books of the Municipality of which such unincorporated Village forms a part; but such books shall not be further used. 31 V. c. 20, s. 80.

Registration in books for unincorporated villages.

Proviso.

88. The registration of any instrument had before the twenty-ninth day of March, one thousand eight hundred and seventy-three, shall not be deemed void by reason of any defect in the proof for registration; but this section shall not apply to any matter or fact adjudged or decided upon before the said date by any Court of competent jurisdiction in that behalf. 36 V. c. 17, s. 6.

Defective registrations before 29th March, 1873, not to be deemed void.

89. No registration, or entry made before the said last mentioned date shall be adjudged or held to be void by reason of the Registrar having failed or omitted to make or sign the certificate of entry, discharge, or registration required to be made in the margin of, or elsewhere in the Registry Books or other books of entries: and in case of such failure or omission, such certificate may be made or signed by any subsequent Registrar, and shall have the same force and effect as if it had been made or signed by the Registrar whose duty it was to have made or signed it. 36 V. c. 17, s. 9.

Registrations, &c., not to be deemed void by absence of certificates, &c., in margin of books.

90. In case a part or parts of any Township or Townships as originally laid out, surveyed and named, had before the said last mentioned date been made or erected into a new Township, but, nevertheless, the registrations of instruments affecting or respecting land in said first mentioned Township or Townships, and the Registry Books and Indexes therefor and relating thereto continued to be and were on the said date used, made, kept, entered and registered for and of said first mentioned Township or Townships, and as if the same had continued to be as so originally laid out, surveyed and named, then and in every such case, and for and in respect to all matters and purposes either before or after the said date of or relating to any such instrument and any and all such registrations, Registry Books and Indexes, and the description therein of any land or premises, said first-mentioned Township or Townships shall be deemed, considered and taken as if the same had continued to be and remained as so originally laid out, surveyed, and named.

The case of part of a township made part of a new township with out change of registry books provided for.

2. Nothing in this section contained shall be deemed or taken as relating to or affecting any incorporated Town or Village, or the land therein, or the registration of any instrument respecting the same, from or after the time of the incorporation of said Town or Village.

Proviso.

Proviso.

3. Nothing in this section contained shall impair or make defective any instrument or the registration thereof, because of any land being therein described or mentioned as situate in such new Township. 36 V. c. 17, s. 10.

*List of Crown Grants to be furnished to Registrar.*

Provincial Secretary to furnish statement of Crown grants once every three months.

91. The Provincial Secretary shall once in every three months, furnish to each Registrar a statement containing a list of the names of all persons to whom patents have issued from the Crown for grants of land within the County since the former statements, and of all persons whose patents have been cancelled, since the former statements, and with such general or particular descriptions as the case may require; and the Commissioner of Crown Lands shall furnish copies of all plans or maps of Towns and Townships within the same, which have not been already furnished, and in cases where no proper survey of any Township has been made he may cause a proper survey and plan thereof to be made and furnished. \* 31 V. c. 20, s. 81; 40 V. c. 7, *Sched. A* (130.) See also *Rev. Stat.* c. 23, ss. 35 & 37.

Maps to be furnished by Commissioner of Crown Lands.

[Sections 80 and 81 of 29 V. c. 24, are as follows:—

Falseswearing under this Act to be perjury.

80. Any person forswearing himself before any Registrar or his Deputy, or before any Judge, Commissioner, or other person duly authorized to administer an oath in any of the cases aforesaid, and lawfully convicted, shall incur and be liable to the same penalties as if the oath had been taken in any Court of Record in Ontario.

Forging certificates, &c., under this Act, to be felony.

81. Any person who forges or counterfeits any certificate by this Act authorized or directed, or any affidavit of the execution of any duplicate original or memorial, or any instrument whatever mentioned in this Act, shall be deemed guilty of felony, and shall be imprisoned at hard labour in the Penitentiary for any time not less than four years nor more than ten years.]

FEEs OF REGISTRARS.

Fees.

92. Every Registrar shall be allowed the following fees for the following services, and no more :

For registrations generally.

1. For the necessary entries and certificate in registering every instrument other than those hereinafter specially provided for, including among such certificates the certificate on the duplicate, if any, forty cents; and for registering every instrument, other than those hereinafter specially provided for, one dollar;

But in case the said instrument exceeds seven hundred words, then at the rate of fifteen cents for each additional one hundred words or the fractional part thereof, up to fourteen hundred words, and at the rate of ten cents for each additional hundred words or fractional part thereof over fourteen hundred;

And if the memorial or other instrument embraces different lots or parcels of land, situate in different localities in the same County, the registration and copying of such, including all necessary entries and certificates thereof into the different Registry Books, shall be considered separate and distinct registrations of such instruments, but shall be charged for and paid at the rate of forty cents for the necessary entries and certificate, and for the said instrument, fifteen cents for every one hundred words, or the fractional part thereof up to fourteen hundred, and of all over that, at the rate of ten cents for each hundred words or fractional part thereof;

If the instrument includes different lots in different localities.

2. For searching the Registry Books and Indexes relating to the title of any lot or part of a lot of land as originally patented by the Crown, or as afterwards subdivided into smaller lots, shewn by any registered map or plan thereof, when not exceeding four references, twenty-five cents, and five cents for every additional reference; but in no case shall a general search into the title to any particular lot, piece or parcel of land exceed the sum of two dollars;

For searches as to title.

General search.

3. For searching, if specially required, the Alphabetical Index of names referred to in section thirty-four as to each name in the books of any one Township, or other legally defined Municipality in the County, twenty-five cents; but if a general search as to any such name is made throughout the County, the aggregate of fees for such search shall not exceed one dollar;

Searching Alphabetical Index.

General search.

4. For every abstract of title to any specific parcel of land certified by the Registrar containing such particulars as to any number of the registered instruments affecting such parcel of land as the party searching may require, twenty-five cents; and when such abstract exceeds one hundred words, fifteen cents for every additional hundred words; and for copies of instruments when required, ten cents for each hundred words;

Abstracts of title.

5. For each certificate furnished by the Registrar, except those made under sub-sections one and four of this section, twenty-five cents;

Certificates

6. For registration of any plan of Town or Village lots, including all necessary entries connected therewith, one dollar;

Filing plans

7. For furnishing the statement and copies required under the twenty-eighth, thirty-first and thirty-second sections of this Act, to be paid by the County Treasurer, to which any City, Town, Township, Village or place belongs or is attached, the sum of ten cents for every folio of one hundred words contained in such statement so furnished or copy so made; and the County Treasurer shall also pay such sum as the Inspector may order in writing, specifying the nature of the service under any

Statements under Secs. 28, 31 & 32.



section of this Act, for repairing any book, or copying, mounting, or binding plans under the provisions of section thirty-two of this Act; and Towns separated from Counties for municipal purposes, and Cities in which no separate Registry Office exists shall bear a rateable proportion of the expense thereof, based on the assessment of all the Municipalities within the jurisdiction of such County;

- Entering lots under sec. 35. 8. For entering under each lot the registrations made before the first day of January one thousand eight hundred and sixty-six, the sum of ten cents for the several entries and reference of each instrument so entered, to be paid for in the same manner as provided for in the next preceding sub-section; but no fees shall be chargeable in respect of the Alphabetical Index, and in no case shall the fees chargeable in respect of the Abstract Index for any County, exceed in the whole the sum of two thousand dollars; 31 V. c. 20, s. 70 (1-8).
- Proviso.
- Affidavits. 9. For drawing each affidavit and swearing the deponent thereto, twenty-five cents; the same fee to be allowed for administering the oath when such only is required;
- Shewing originals. 10. For exhibiting in the office each original registered instrument, including search for same, ten cents;
- Certificates of discharge. 11. For registering each certificate of payment of mortgage money, and every other certificate excepting certificates provided for in the next succeeding sub-section, including all entries and certificates thereof, fifty-cents;
- Of payment of taxes. 12. For registering each certificate of payment of taxes, twenty-five cents;
- Figures, how charged. 13. In abstracts and certificates where figures are used instead of words to denote dates, numbers and quantities, the same shall be charged as if each number, though composed of several figures, was but one word. 31 V. c. 20, s. 70 (10-14).
- Table of fees. **93.** Each Registrar shall keep posted up in some conspicuous place in his office a printed schedule of the fees and charged authorized under this Act. 31 V. c. 20, s. 70 (10-15).
- Registrars to give statement of fees payable in any matter. **94.** Every Registrar shall upon request of the person for whom the service is performed, furnish a statement in detail of the fees charged by him in respect of any matter for which fees are payable under the provisions of this Act. 38 V. c. 17, s. 7.
- Recovery of fees from municipal corporations. **95.** Should the Treasurer of any County or City in which a separate Registry Office is established, on the request of the Registrar for the duties performed according to this Act, refuse to pay the fees and allowances for any services required

by this Act, such Registrar may prove and recover the same and the costs thereof from the Corporation of the County or City in any Court of Record in Ontario; and the Inspector's certificate of the amount and of the services rendered shall be *prima facie* evidence of the right to recover. 31 V. c. 20, s. 72. Evidence.

**96.** The Registrar shall not be compelled to register any instrument unless the fees authorized by this Act are first paid thereon. 31 V. c. 20, s. 73. Fees payable before registration.

**97.** Every Registrar shall keep a separate book in which he shall enter, from day to day, all fees and emoluments received by him by virtue of his office, shewing separately the sums received for registering each instrument, and for searches, and for extracts or copies, and shall make, up to and including the thirty-first day of December of the previous year, a return, under oath, of such fees and emoluments so received to the Lieutenant-Governor, annually, on the fifteenth day of January. 31 V. c. 20, s. 74. Registrars to keep accounts of fees.  
  
Return.

**98.** Each Registrar shall be entitled to retain to his own use in each year all the fees and emoluments received by him in that year up to two thousand five hundred dollars. 35 V. c. 27, s. 1. Registrar's emolument when fees do not exceed \$2,500.

**99.** Of the further fees and emoluments received by each Registrar in each year, in excess of two thousand five hundred dollars not exceeding three thousand dollars, he shall be entitled to retain to his own use ninety per cent. and no more. 35 V. c. 27, s. 2. When fees are between \$2,500 and \$3,000.

**100.** Of the further fees and emoluments received by each Registrar in each year, in excess of three thousand dollars not exceeding three thousand five hundred dollars he shall be entitled to retain to his own use eighty per cent. and no more. 35 V. c. 27, s. 3. When fees are between \$3,000 and \$3,500.

**101.** Of the further fees and emoluments received by each Registrar in each year, in excess of three thousand five hundred dollars not exceeding four thousand dollars, he shall be entitled to retain to his own use seventy per cent and no more. 35 V. c. 27, s. 4. When fees are between \$3,500, and \$4,000.

**102.** Of the further fees and emoluments received by each Registrar in each year, in excess of four thousand dollars not exceeding four thousand five hundred dollars, he shall be entitled to retain to his own use sixty per cent and no more. 35 V. c. 27, s. 5. When fees are between \$4,000 and \$4,500.

**103.** Of the further fees and emoluments received by each Registrar in each year in excess of four thousand five hundred When fees exceed \$4,500.

dollars he shall be entitled to retain to his own use fifty per cent. and no more. 35 V. c. 27, s. 6.

Application of  
surplus fees.

**104.** On the fifteenth day of January in each year each Registrar shall transmit to the Treasurer of the County or City for which, or for a Riding of which, he is Registrar, a duplicate of the return required by this Act, and shall also pay to such Treasurer for the uses of the Municipality such proportion of the fees and emoluments received by him during the preceding year, as under this Act he is not entitled to retain to his own use.

2. Where the County or Riding includes a City or Town separated from the County for municipal purposes, the amount aforesaid shall be paid to the Treasurer of the County and to the Treasurer of the City or Town for the uses of the Municipality in the same proportions in which the gross fees and emoluments are derived from extracts, searches, registrations, and other charges in respect of lands situate in the County, and in respect of lands situate in the City or Town. 35 V. c. 27, s. 7.

Fees under  
ss. 28, 31 or 32,  
etc., not in-  
cluded in  
above provi-  
sions.

**105.** In the fees and emoluments mentioned in the seven next preceding sections of this Act, shall not be included any sums receivable from the Municipality for the preparation of Abstract Indexes, or for work done under the twenty-eighth, thirty-first or thirty-second sections of this Act. 35 V. c. 27, s. 7.

#### INSPECTOR OF REGISTRY OFFICES.

Appointment  
of Inspector,  
and his duties.

**106.** The Lieutenant-Governor may, from time to time, appoint an Inspector of Registry Offices, whose duty shall be,

Inspection of  
building.

(1.) To make a personal inspection of the building in which each office is kept, and of the books, deeds, memorials and other instruments in each Registry Office;

Books, etc.

(2.) To see that the proper books are provided, that they are in good order and condition, that the proper entries and registrations are made therein in a proper manner and in a due and proper form and order, that the Indexes are properly kept, and that all the memorials and other instruments are duly endorsed and certified, and preserved;

Office hours.

(3.) To ascertain that the office is kept duly open at and for the proper times, and that it is at all times duly attended to by the Registrar or his Deputy;

Seals of office.

(4.) To settle on some uniform device for the official seals, and to see that the Registrars supply themselves therewith;

New Indexes.

(5.) To inspect all new Abstract and Alphabetical Indexes, and to settle and certify the sums, if any, chargeable therefor;

Plans.

(6.) To ascertain whether the proper plans required by this Act have been filed in the several Registry Offices, and where

necessary, to enforce the provisions of the law in that respect, and he may instruct the County Crown Attorney to take the necessary proceedings for that purpose;

(7.) To report upon any vacancies by death or otherwise, in the offices of Registrar and Deputy Registrar; Reporting vacancies.

(8.) To inform the Registrar how and in what manner he shall do any particular act or amend or correct whatever he may find amiss: and in case he finds the work improperly performed by any Registrar he shall have power to order a new Book or Books to be prepared and completed by the Registrar at his own expense; Instruction of Registrar in his duties.

(9.) To ascertain the sufficiency or insufficiency of the sureties for the Registrar, and whether they are living or dead; and Sufficiency or insufficiency of sureties.

(10.) To report upon all such matters, as expeditiously as may be, to the Lieutenant-Governor for his information and decision. Reporting to Lieutenant-Governor.  
31 V. c. 20, s. 84.

**107.** A sum not exceeding two thousand dollars per annum, which shall include all travelling and other expenses, shall be allowed to the Inspector of Registry Offices. Pay of Inspector.  
31 V. c. 20, s. 71.

**108** No part of this Act shall be read or relied upon to aid or affect the construction of any statute heretofore in force. Act not to be used to construe other Statutes.  
31 V. c. 20, s. 85.

## SCHEDULE "A."

(Section 9.)

### FORM OF COVENANT OF REGISTRAR.

Know all Men by these presents, that we, A. B., Registrar of Esq., and C.D. of Esq., and E. F., Esq., do hereby jointly and severally for our and each of our heirs, executors and administrators, covenant and promise, that the said A. B., as Registrar of shall well, truly, and faithfully perform the duties and obligations of his office as such Registrar, and that neither he nor his Deputy shall negligently or wilfully misconduct himself in his said office to the damage of any person or persons whomsoever; nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties hereto than the following, that is to say: against the said A. B. in the whole, \$ [the amount fixed by Order in Council]; against the said C. D. and E. F., \$ respectively [the amount fixed by Order in Council for each].

In witness thereof we have hereunto set our hands and seals this day of A. D. 18

Signed, sealed and delivered in presence of

}



## SCHEDULE "B."

(Section 9.)

## FORM OF AFFIDAVIT OF JUSTIFICATION.

County of } I, A. B., of \_\_\_\_\_ one of the sureties  
 To wit : } in the annexed covenant named, make oath and say as  
 follows :

I am seised and possessed to my own use of real (or real and personal) estate in Ontario of the actual value of \$ \_\_\_\_\_ over and above all charges upon, or incumbrances affecting the same.

2. (*Where the party has real estate.*) The said real estate consists of (*describing the property*).

3. I am worth (*the amount for which the party has become liable by the covenant*) dollars over and above my just debts.

4. My post office address is as follows : (*insert name of the post office*).

Sworn before me at \_\_\_\_\_, in the County of \_\_\_\_\_, this  
 day of \_\_\_\_\_, A. D. 18 \_\_\_\_.

31 V. c. 20, Form B.

## SCHEDULE "C."

(Section 16.)

## FORM OF REGISTRAR'S OATH OF OFFICE.

## ONTARIO.

County of } I [*name and describe deponent*], having been appointed  
 To wit : } by the Lieutenant-Governor to the office of Registrar, in and  
 for the [*name of Registration Division, &c.*] do swear that I will  
 well, truly and faithfully perform and execute all duties required  
 of me, under the laws of this Province, pertaining to the said office, so  
 long as I continue therein, and that I have not given, directly or indi-  
 rectly, nor authorized any person to give, any money gratuity or reward  
 whatsoever for procuring the said office for me.

Sworn before us at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.  
 A. B., J.P., }  
 C. D., J.P., } In and for the said County.

31 V. c. 20, Form C.

## SCHEDULE "D."

(Section 27.)

## FORM OF CERTIFICATE RESPECTING REGISTRY BOOKS.

This Register contains \_\_\_\_\_ pages exclusive of index, and  
 is to be used in and for the City (or, Town, Incorporated Village or Town.

ship) of \_\_\_\_\_, in the County of \_\_\_\_\_, for the  
 enregistration of deeds, duplicates, and other instruments under the  
 provisions of "*The Registry Act*," and is provided in pursuance of the  
 requirements of the said Act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18 \_\_\_\_.  
 A. B., Judge of the County Court of \_\_\_\_\_ or,  
 A. B., Warden of the County of \_\_\_\_\_.

31 V. c. 20, *Form D*.

## SCHEDULE "E."

(*Section 38.*)

### FORM OF AFFIDAVIT OF EXECUTION.

County of \_\_\_\_\_ } I,  
 To Wit. } the \_\_\_\_\_ of \_\_\_\_\_, of  
 \_\_\_\_\_, make oath

and say .

1. That I was personally present and did see the annexed (*or within*)  
 (and duplicate, *if any, according to the fact*) duly signed,  
 sealed and executed by \_\_\_\_\_ and  
 the parties thereto.

2. That the said \_\_\_\_\_ (and duplicate *if any, according*  
*to the fact*) were executed at the \_\_\_\_\_  
 of \_\_\_\_\_.

3. That I know the said parties (*or onej or more of them, according to*  
*the fact*).

4. That I am a subscribing witness to the said  
 (and duplicate, *according to the fact*).

31 V. c. 20, *Form E*.

## SCHEDULE "F."

(*Section 47.*)

### CERTIFICATE OF COUNTY JUDGE IN LIEU OF AFFIDAVIT OF EXECUTION.

#### ONTARIO.

County of \_\_\_\_\_ } I,  
 To Wit : } Judge of the County Court of the County of \_\_\_\_\_  
 \_\_\_\_\_, certify that, from the proof adduced by (*name the*  
*person producing the proof, and state the evidence given*) I am  
 satisfied of the due execution of the within instrument (*or of the instru-*

ment whereof the within is a copy, memorial or duplicate, as the case may be). As witness my hand at the  
day of A. D. 18 .

A. B.,  
Judge of the County Court of

31 V. c. 20, Form F.  
39 V. c. 25, s. 5.

## SCHEDULE "G."

(Sections 56 and 59.)

### FORM OF CERTIFICATE OF REGISTRATION.

I certify that the within is duly entered and  
registered in the Registry Office for the of the County  
of in Book for the of  
at o'clock of the day of  
A. D. 18 .  
Number

Registrar.  
or Deputy Registrar.

31 V. c. 20, Form G.

## SCHEDULE "H."

(Section 60.)

### FORM OF MINUTE OF REGISTRATION.

Entered and Registered this day of  
A.D. at o'clock.

31 V. c. 20, Form H.

## SCHEDULE "J."

(Sections 67 and 69.)

### FORM OF DISCHARGE OF MORTGAGE.

To the Registrar of the County of

I , of , do certify that has satisfied all  
money due on, or to grow due on (or has satisfied the sum of \$ men-  
tioned in), a certain mortgage made by of to  
which mortgage bears date the day of A.D. 18 , and  
was registered in the Registry Office for the County of , on  
the day of , A.D., 18 , at minutes past  
o'clock, noon, in Liber for as No. (here mention the day  
and date of registration of each assignment thereof, and the names of the parties,  
—or mention that such mortgage has not been assigned, as the fact may be) and  
that I am the person entitled by law to receive the money, and that such  
mortgage, (or such sum of money as aforesaid, or such part of the lands as is

herein particularly described, that is to say :  
discharged.

) is therefore

Witness my hand this

day of

A.D. 18 .

A. B.

One Witness.

}

31 V. c. 20, *Form J.*  
36 V. c. 17, s. 8.

## SCHEDULE "K."

(Section 71.)

FORM OF CERTIFICATE OF DISCHARGE OF MORTGAGE BY SHERIFF, ETC.

To the Registrar of the County, (Riding or City, *as the case may be*)  
of

I, A. B. of Sheriff of the County of  
or Bailiff of the (number) Division Court of the County (or City, *as the case may be*) of do certify that by virtue of a writ of execution wherein C. D. is plaintiff and E. F. defendant, issued out of Her Majesty's Court of Queen's Bench (or *as the case may be*) and to me directed, I seized a certain mortgage made by one J. H. of (*as described in said mortgage*) bearing date the day of A.D. 18 and registered at of the clock in the forenoon, Liber , for No. (*as the case may be*) of the day of in the same year, (*as the case may be*) to E. F. of (*as described in the mortgage*) the defendant in the said writ of execution named, and such mortgage has not been assigned (or has been assigned to the defendant and such assignment has been registered as follows : *Here set out date and registration of assignment*) and I do further certify that I have levied from the said mortgagor, his executors, administrators or assigns (*as the case may be*) the full amount of said mortgage, (or \$ parcel of said mortgage,) and that such mortgage is therefore discharged (or that such mortgage is, as to \$ parcel of the moneys thereby payable, discharged).

As witness my hand and seal of office (or the seal of the said Court).

This day of

A.D. 18

Witness.

L. M.

}

Signed,

A. B.

38 V. c. 17, s. 2.

## SCHEDULE "L."

(Section 82.)

FORM OF SURVEYOR'S CERTIFICATE OF PLAN.

This plan is correct, and is prepared under the provisions of "The Registry Act."

*Signature of Surveyor.*

31 V. c. 20, *Form K.*



## SCHEDULE "M."

## (Section 33.)

## FORM OF ABSTRACT INDEX.

Township of Yarmouth, Lot No. , in the 1st Concession.

1	2	3	4	5	6	7	8	9
No. of Instru- ment.	Instru- ment.	Its Date.	Date of Registry.	Grantor.	Grantee.	Quantity of Land.	Consideration in conveyance or amount of mortgage money.	Remarks.
54.....	Patent.	21st February, 1820 ..		Crown	John Jones	All of said Lot.	\$300	
72.....	B. & S.	10th January, 1835.....	11th January, 1835.....	David Brown and wife.	George Smith	N. ½.	\$400	
460.....	B. & S.	30th May, 1830 .....	15th May, 1838 .....	John Jones and wife—	David Brown	N. ½.	\$500	
461.....	B. & S.	23rd June, 1840 .....	23rd June, 1840 .....	George Smith	Charles Gates	N. ½.	\$782	
490.....	M.	Do do .....	Do do .....	Charles Gates and wife.	George Smith	N. ½.	\$500	
1009.....	B. & S.	20th October, 1841.....	20th October, 1841.....	John Jones and wife —	Charles Gates	S. ½.	\$200	D of 461.
2560.....	D. M.	23rd June, 1842 .....	1st July, 1842 .....	George Smith	Charles Gates	N. ½.	\$800	
2875.....	B. & S.	25th April, 1855 .....	1st May, 1856 .....	Charles Gates and wife	Alexander Erie.	All.	\$1 and nat. love and affection.	
	B. & S.	1st May, 1860 .....	1st May, 1860 .....	Alexander Erie	James Erie	E. ½ of the N. ½ or N.E. ½.		

## SCHEDULE "N."

(Section 34.)

## FORM OF ALPHABETICAL INDEX.

No. of Instrument.	GRANTOR.	GRANTEE.	No. of Instrument.	GRANTEE.	GRANTOR.
	A.			A.	
1011	Abbott, George	Black, John	1029	Appleton, James	Buck, Peter.
1015	Allen, William	Cook, Edward	1039	Angus, Robert	Cooms, Joseph.
1017	Anderson, James	Smith, Thomas	1056	Anson, William	Whalks, Jane.
	B.			B.	
1004	Bernard, John	Green, Edward	1011	Black, John	Abbott, George.
1020	Burns, Robert	Cassels, George	1070	Benson, Jessie	Crooks, Nelson.
1029	Buck, Peter	Appleton, James	1098	Burrows, Joseph	Hinds, Henry.
	C.			C.	
1039	Cooms, Joseph	Angus, Robert	1015	Cook, Edward	Allen, William.
1048	Coffee, Richard	Ingram, Benjamin	1020	Cassels, George	Burns, Robert.
1070	Crooks, Nelson	Benson, Jessie	1118	Castor, Simeon	Philip, Richard.

## TITLE VIII.

## PROPERTY IN WATERS AND STREAMS.

---

CHAP. 112.—Ferries, p. 1100.

“ 113.—Mills and Mill Dams, p. 1103.

“ 114.—Water Privileges, p. 1107.

“ 115.—Rivers and Streams, p. 1112.

---

## CHAPTER 112.

## An Act respecting Ferries.

---

Licenses of ferry, ss. 1, 2.

Limits of ferries, s. 3.

Ferries between two municipalities,  
ss. 4, 5.

Conditions of license, s. 6.

Municipality may sublet, s. 7.

Cities, &c., to have preference in  
grant of license, s. 8.

Persons may keep boats at ferries, s.  
9.

Penalties for interference with li-  
censed ferryman, ss. 10-12.

By-laws by municipalities regulating  
ferries, s. 13.

---

HER Majesty, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows :

License to be  
issued by the  
Lieutenant-  
Governor under  
the Great  
Seal.

1. Every grant or license of ferry shall be issued by the  
Lieutenant-Governor under the Great Seal. C. S. U. C. c.  
46, s. 2.

Ferries to be  
leased by pub-  
lic competition  
and only for a  
limited time.

2. Except as herein otherwise provided, no ferry in Ontario  
shall hereafter be leased by the Crown, nor shall the lease  
thereof be renewed, or any license by the Crown to act as a  
ferryman thereat be granted, except by public competition,  
and after notice of the time and place at which tenders will be  
received for the lease or license for such ferry, inserted at  
least four times in the course of four weeks in the *Ontario*

*Gazette*, and in one or more of the newspapers published in the County in which the ferry is situate, and to parties giving such security as the Lieutenant-Governor in Council may require; nor shall any such ferry be leased or the license thereof be granted for a longer term than seven years at any one time C. S. U. C. c. 46, s. 3.

3. In every case, except in the case of Municipalities as hereinafter provided, where the limits to which the exclusive privilege of any ferry extends are not already defined, such exclusive privilege shall not be granted for any greater distance than one mile and a half on each side of the point at which the ferry is usually kept, but nothing herein contained shall invalidate or infringe upon any existing grant or right of ferry. C. S. U. C. c. 46, s. 4.

Limits of ferries.

4. In all cases where a ferry is required over any stream or other water within Ontario, and the two shores of such stream or other water are in different Municipalities, such Municipalities not being in the same County, the Lieutenant-Governor in Council may grant a license to either of such Municipalities exclusively, or to both conjointly, as may be most conducive to the public interest. C. S. U. C. c. 46, s. 5.

Lieutenant-Governor may grant a license to have a ferry communication between two Municipalities.

5. Such license shall confer a right on the Municipality or Municipalities to establish a ferry from shore to shore on such stream or other water, and with such limit and extent as may appear advisable to the Lieutenant-Governor in Council, and be expressed in such license. C. S. U. C. c. 46, s. 6.

Extent of right conferred, &c.

6. Such license shall be upon condition that the craft to be used for the purpose of such ferry shall be propelled by steam, and be of such dimensions, and the engine thereof be of such power as the Lieutenant-Governor in Council may direct; and upon such further conditions as the Lieutenant-Governor in Council may think fit and express in such license. C. S. U. C. c. 46, s. 7.

Condition of license as to steam, &c.

7. The Council of the Municipality to which any such license is issued, may pass by-laws, not contravening the terms of the license, declaring their determination to sub-let the said ferry, and may sub-let the same for the price, and upon such terms, and to such parties, and on such conditions, and at such rates of ferriage to be paid, as the said Council may think fit. C. S. U. C. c. 46, s. 8.

Municipalities may sub-let ferries.

8. In all cases where one shore of such stream or other water is within the limits of a City, Town, or incorporated Village, and the other shore thereof in a Township or rural Municipality, the license shall be issued to the City, Town, or incorporated Village; But in case the rural Municipality opposite to any such City, Town, or incorporated Village, is an

Incorporated Cities, Towns and Villages to have the preference as to such license.



island, then the license shall be granted to the island Municipality. C. S. U. C. c. 46, s. 9.

Parties may keep boats for their own use.

**9.** Any person may keep at any such ferry a boat, vessel, or other craft, for his own private use, or may use, for the accommodation of himself or of his employer, his own or his employer's boat, vessel or craft, to cross the river or stream on which the ferry is situate; but such privilege shall in no wise be used to take, carry or convey any other persons or property for hire, gain, reward or profit, or hope thereof, or directly or indirectly to enable any of such other persons to evade the payment of tolls at such ferry. C. S. U. C. c. 46, s. 11.

Penalty for interfering with licensed ferryman.

**10.** If any person unlawfully interferes with the rights of any licensed ferryman, by taking, carrying, and conveying, at any such ferry, across the river or stream on which the same is situate, any person, cattle, carriage, or wares, in any boat, vessel, or other craft, for hire, gain, reward, profit, or hope thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any lessee of the Crown of any such ferry, such offender, upon conviction thereof before a Justice of the Peace, shall forfeit and pay such sum of money not exceeding twenty dollars, as the Justice may direct, which sum shall be paid to the party aggrieved, except where he has been examined in proof of the offence, in which case the money shall be applied and accounted for in the same manner as any penalty imposed for a breach of the peace. C. S. U. C. c. 46, s. 10.

Offender to be committed if penalty not paid.

**11.** In case the sum forfeited is not paid immediately after conviction, the convicting Justice may commit the offender to the Common Gaol of the County, there to be imprisoned for any term not exceeding two months, unless the forfeiture, and the costs, are sooner paid. C. S. U. C. c. 46, s. 12.

License evidence of title to the ferry.

**12.** On the trial of any offender against this Act, every license heretofore issued or issued under this Act, shall be *prima facie* evidence of title to the ferry. C. S. U. C. c. 46, s. 14.

Municipal Councils may pass by-laws regulating ferries in certain places. Rev. Stat. c. 174.

**13.** The Council of every County, City and Town separated from the County, under "*The Municipal Act*," may pass by-laws for regulating ferries between any two places in the Municipality; and establishing the rates of ferriage to be taken thereon; but no such by-law shall have effect until assented to by the Lieutenant-Governor in Council; and until the Council of the County, City or Town separated as aforesaid pass a by-law regulating such ferries, and in the cases of ferries not between two places in the same Municipality, the Lieutenant-Governor, by Order in Council, may from time to time regulate such ferries respectively, and establish the rates to be taken thereon subject to the provisions of this Act. C. S. U. C. c. 46, s. 15. *See also Rev. Stat. c. 174, s. 465 (4).*

## CHAPTER 113.

## An Act respecting Mills and Mill-Dams.

---

Tolls for grinding and bolting restricted, s. 1.	Maintenance of dams, &c., In the County of Huron, s. 8.
Bags to be marked, s. 2.	On the River Moira, ss. 9-12.
Construction of aprons, slides, waste-gates, slash-boards, brackets, ss. 3-6.	On the River Otonabee, s. 13.
Penalty for not constructing, &c. s. 7.	Penalties suspended when dams, &c., injured by floods, s. 14.
	No damages for overflow of adjacent lands in certain cases, ss. 15, 16.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** No owner or occupier of a mill, nor any person employed by him, shall demand or take as toll a greater proportion of any grain brought to him to be ground and bolted than one twelfth part thereof, for grinding and bolting the same, under a penalty of forty dollars for every such offence; one moiety thereof to be paid to Her Majesty, for the public uses of the Province, and the other moiety to any person who sues for the same in any Court of Record. C. S. U. C. c. 48, s. 1.

No greater proportion to be taken for grinding and bolting grain than one twelfth.

**2.** No owner or occupier of a mill shall be bound to receive or be chargeable with the loss of any bag of grain or flour, unless such bag is marked with the initial letters of the Christian name and surname of the owner of the grain, or with some mark distinguishing the bag, which mark of distinction shall be previously communicated and made known to the owner or occupier of the mill, or his servant usually attending the same. C. S. U. C. c. 48, s. 2.

Bags must be marked.

**3.** Subject to any jurisdiction in this behalf of the Dominion of Canada and to any Acts of the Parliament of Canada in the exercise of such jurisdiction, in case a mill-dam is legally erected on any stream, down which lumber is usually brought, or in which salmon or pickerel abound, the owner or occupier of such dam shall construct and maintain a good and sufficient apron thereto, not less than eighteen feet wide by an inclined plane of twenty-four feet eight inches to a perpendicular of six feet, and so in proportion to the height where the width of the stream will ad-

Owners or occupiers of mills to construct aprons to their dams.

Penalty and its appropriation.

mit of it; and in case such stream or dam is less than fifteen feet wide, the whole dam shall be aproned in like manner with the same inclined plane; and every such owner or occupant who neglects to construct or maintain such apron, shall for such offence, forfeit and pay yearly the sum of one hundred dollars; one moiety thereof to Her Majesty for the public uses of the the Province, and the other moiety to any person who may sue for the same in any Court of Record. C. S. U. C. c. 48, s. 3.

Apron or slide to admit passing of logs, &c.

4. Every owner or occupier of a mill-dam at which an apron or slide is required to be constructed as aforesaid shall, if necessary, alter, or if not already built, shall construct such apron or slide so as to afford depth of water sufficient to admit of the passage over such apron or slide of such saw-logs, lumber and timber as are usually floated down the streams or rivers whereon such dams are erected; but any owner or occupier of any such dam may construct a waste-gate or put up brackets and slash-boards in, upon and across the apron, for the purposes of preventing any unnecessary waste of water therefrom, and may keep the same closed when no person is ready and requires to pass or float any craft, lumber or saw-logs over such apron or slide. C. S. U. C. c. 48, s. 4.

Waste-gates, slash-boards.

Owners not obliged to remove brackets until rafts, &c., ready to pass.

5. The owner or occupier of any such dam shall not be bound to remove the brackets or slash-boards across the apron thereof until the raft, craft, lumber or saw-logs, required to be passed, are ready to pass and have for that purpose gained the main channel of the stream. C. S. U. C. c. 48, s. 5.

When aprons and slides mentioned in ss. 3 and 4, not required in small streams.

6. No person shall be required to build such aprons or slides as are mentioned in the third and fourth sections on small streams, unless required for the purposes of rafting or floating down lumber and saw-logs as aforesaid. C. S. U. C. c. 48, s. 6.

#### PENALTIES.

Penalty on owner of dam refusing to comply with the requirements of this Act.

7. Every owner or occupier of any dam mentioned in the fourth section of this Act who (if not already made and constructed,) neglects or refuses to make and construct and keep in repair an apron of the description therein mentioned shall pay a penalty of two dollars per day for every day of such neglect, and such penalty shall be recoverable before any two Justices of the Peace for the County in which the offence has been committed, on the oath of two credible witnesses, and if not paid, shall be levied by distress and sale of the goods and chattels of the offender, by a warrant under the hand and seal of such Justices, or one of them, and shall be paid to the Treasurer of the Municipal Corporation having jurisdiction in the locality where such dam is erected, for the general uses of the Municipality. C. S. U. C. c. 48, s. 7.

How enforced.

## MILL-DAMS IN SPECIFIED PLACES.

1. *In the County of Huron.*

8. Subject to any jurisdiction of the Dominion of Canada in this behalf, and to any Acts of the Parliament of Canada in the exercise of such jurisdiction, the owner or occupier of every dam or weir erected on any river or stream in any of the Townships of Williams, McGillivray, Stephen, Hay, Stanley, Goderich, Colborne, Hullet, McKillop, Tuckersmith, Hibbert, Logan, Fullarton, Osborne, Biddulph, Blanchard, Downie including the Gore of Ellice, North Easthope, and South Easthope, or any other tracts of land which on the twenty-ninth day of March, one thousand eight hundred and forty-five, constituted the then District of Huron, shall, if the same has not been already done, construct and maintain, and, if constructed, shall maintain and keep in repair, a good and sufficient apron to such dam or weir, at least twenty-eight feet wide, if the dam or weir is of greater width, and if not, then of the same width as the dam or weir, and at least eight feet in length for every foot rise of such dam or weir, under a penalty of one dollar for each day during which the requirements of this section are not complied with; and such penalty shall be recoverable before any two Justices of the Peace for the County in which the offence has been committed, on the oath of one credible witness; and if not paid, may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such Justices or either of them; one moiety of which penalty shall belong to Her Majesty, for the public uses of the Province, and the other moiety to the prosecutor. C. S. U. C. c. 48, s. 8.

Dams and  
Weirs in the  
County of  
Huron.

2. *On the River Moira.*

9. Subject as aforesaid, the owner or occupier of any dam on the River Moira or its tributaries, in the County of Hastings, on which lumber is floated to market, shall construct and maintain, and if constructed, shall maintain and keep in repair a good and sufficient apron to such dam, at least thirty-two feet in width, if the dam is of that or of greater width, and if not, then of the width of the dam, and at least five feet in length for every foot rise of such dam; and the height of the dam at the place where the apron is constructed, shall be at least two feet lower than the top of the said dam at any other place (unless it occupies the whole width thereof as aforesaid); but if the rise of the dam is less than four feet, the height of the dam at the place where the apron is constructed shall not exceed one half its height at any other place. C. S. U. C. c. 48, s. 9.

On the river  
Moira.

10. Every such apron shall be constructed on the main channel of the stream, and its highest part shall be one foot below the level of the dam at the place where it joins the same, under a penalty of twenty-five cents for each day the require-

Penalty for  
contravention.



ments of this and the next preceding section are not complied with. C. S. C. U. c. 48, s. 10.

How recovered  
and enforced.

**11.** The said penalty, on the complaint of any person engaged in the lumber trade upon the said river or any tributary thereof, may be recovered before any two Justices of the Peace for the County in which the offence has been committed, upon the oath of one credible witness other than the informer, one half of which penalty shall belong to Her Majesty, for the public uses of the Province, and the other moiety to the prosecutor; and if upon conviction such penalty be not forthwith paid, it shall, by warrant under the hand and seal of such Justices, or of one of them, be levied by distress and sale of the goods of the offender. C. S. U. C. c. 48, s. 11.

Owner not  
obliged to  
alter the apron  
if constructed  
before 23rd  
March, 1848,  
until renewed.

**12.** The ninth section of this Act shall not oblige the owner or occupier of any dam on the River Moira to alter the apron thereof, if constructed before the twenty-third day of March, one thousand eight hundred and forty-eight, until the renewal of such apron. C. S. U. C. c. 48, s. 12.

### 3. *On the River Otonabee.*

Special provi-  
sions with re-  
gard to the  
river Otonabee

**13.** No apron to any mill-dam on the River Otonabee shall be less than thirty-two feet wide by an inclined plane of five feet to a perpendicular of one foot, and so in proportion to the height of the dam; and side pieces of at least one foot in height shall be fixed on the outside of every such apron, to confine the water and prevent the timber from falling off at the sides. C. S. U. C. c. 48, s. 13.

### PENALTIES SUSPENDED WHEN DAMS INJURED BY FLOODS.

If aprons in-  
jured by floods,  
&c., penalties  
suspended for  
a reasonable  
time.

**14.** In case any apron is carried away, destroyed or damaged by flood or otherwise, the owner or occupier of the dam to which the same was attached shall not be liable to any such penalty as aforesaid if such apron is repaired or re-constructed in conformity with this Act, as soon as the state of the stream safely permits. C. S. U. C. c. 48, s. 14.

### NO DAMAGES TO BE GIVEN FOR MILL DAMS OVERFLOWING ADJACENT LANDS IN CERTAIN CASES.

When granted  
of Crown not  
to recover  
damages for  
overflow of his  
lands.

**15.** In case, in any action brought against the proprietor or occupier of a mill, for the overflowing of or injury to land, caused by the erection or continuation of a dam for the purposes of such mill, it appears that the overflowing or other injury was caused by the erection or continuation of a dam which was built before the purchase of such land, by the grantee of the Crown and before the grant thereof to him, and that such purchaser obtained a reduction in the price of such land, or was otherwise indemnified in consequence of its being so over-

flowed or otherwise injured, then on the trial of such action such facts may be taken into consideration, and, if it appears just and equitable, a verdict may in consequence thereof, be found for the defendant. C. S. U. C. c. 48, s. 17.

**16.** In any such action the defendant may plead the general issue, and under such plea, on entering a note of this Act in the margin thereof, may avail himself of this Act, and of the matters of defence herein given. C. S. U. C. c. 48, s. 18.

Defendant  
may plead  
general issue,  
&c.

## CHAPTER 114.

### An Act respecting Water Privileges.

Right of entry upon lands to improve water or mill privilege, s. 1.	tain powers under this Act, ss. 4-10.
Occupied mill privilege defined, s. 2.	Registration of Judge's order, s. 11.
Case of mill privilege not in actual use, s. 3.	Powers of Judge, ss. 12-14.
Application to County Judge to ob-	Appeals from Judge's order, ss. 15-18.
	Miscellaneous, ss. 19-22.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Any person desiring to use or improve any water privilege, of which, or a part of which he is at such time the owner or legal occupant, for any mechanical, manufacturing, milling or hydraulic purposes, by erecting a dam and creating a pond of water, increasing the head of water in any existing pond, or extending the area thereof, diverting the waters of any stream, pond or lake into any other channel or channels, constructing any raceway, or other erection or work which he may require in connection with the improvement and use of the said privilege, or by altering, renewing, extending, improving, repairing or maintaining any such dam, raceway, erection, or work, or any part thereof, shall have the right to enter upon any lands which he may deem necessary to be examined, and to make an examination and survey of the same, doing no unnecessary damage in performing such work, and paying the actual damage done, if any; and if, upon an application to the County Judge as hereinafter provided, he obtains authority, he shall be at liberty to take, acquire, hold and use such portions of the said lands so examined as he may deem expedient for the completion, improvement or maintenance of the water privilege and works in connection with the same. 38 V. c. 27, s. 2 (1).

Right of persons to enter and acquire lands for improving water privileges.

Meaning of  
occupied mill  
privilege, et.

2. An occupied mill privilege or water power or mill lawfully existing within the meaning of this Act, shall mean a mill privilege, water power, or mill which has been or is in use for mechanical, manufacturing, milling or hydraulic purposes, or for the use of which for any of such purposes the necessary works are *bona fide* in course of construction. 38 V., c. 27, s. 2. (3).

Evidence on  
application to  
the County  
Judge against  
owner of privi-  
lege not in ac-  
tual use, as to  
user and in-  
tent.

3. The owners of any privilege, water power or mill having been, but not being, in actual use for such purposes, at the time of an application to the County Judge under this Act, and claiming to be the owners of an occupied mill privilege or water power, or mill lawfully existing, shall upon the application of any person who desires to obtain and exercise the powers mentioned in this Act, produce before the said County Judge, satisfactory evidence that the same is held *bona fide* as such privilege, water power or mill, and is intended to be used again for mechanical, manufacturing, milling or hydraulic purposes; but in the event of such evidence not being produced or not being satisfactory, such original privilege, water power or mill shall not be deemed to be an occupied mill privilege, water power, or mill lawfully existing within the meaning of this Act.

2. The said County Judge in the event of finding that the same is so held *bona fide*, may fix and limit a time within which the necessary works or the actual use of such privilege, water power, or mill, for the purposes for which the same are claimed shall be constructed, and such privilege, water power or mill actually used. 38 V. c. 27, s. 2 (3).

Proceedings  
for obtaining  
the powers  
given by this  
Act.

4. Any person who desires to obtain or exercise the powers hereinbefore mentioned, or any of them, shall proceed as follows:—

*Firstly*.—He shall cause surveys and levels to be taken and made of the lands sought to be taken or acquired, held, used or otherwise affected, together with a map or plan thereof:

*Secondly*.—He shall cause to be prepared a statement giving,

1. A general description of the said lands:
2. The names of the owners and occupiers thereof, so far as they can be ascertained; and
3. Everything necessary for the right understanding of such map or plan, including a Registrar's certified abstract of the titles to all the lands, to be affected by the application:

*Thirdly*.—He shall cause to be filed in the office of the Clerk of the County Court of the County wherein the lands or any part thereof are situate the said map or plan and the said state-

ment, and shall then apply to the Judge of the said County Court for an order to empower him to exercise the said powers or such of them as he may desire. 36 V. c. 40, s. 4.

5. In addition to any other notice which the Judge directs to be given upon any application under this Act, public notice of such application stating the time when the same is to be heard, shall be inserted in a newspaper published in the County or one of the Counties where the proposed works are to be erected, or any of the lands affected are situate, for such period as the Judge may direct. 38 V. c. 27, s. 2 (2).

Public notice of application.

6. The practice upon and in reference to the said application shall be the same as if the said application were for an order or rule for the partition of real estate under the provisions of any of the Acts in reference to such partition. 36 V. c. 40, s. 5.

Practice to be the same as in partition of real estate. See Rev. Stat c. 101.

7. If such Judge is of opinion that the allowance of such application will conduce to the public good and is proper and just under all the circumstances of the case, he shall make an order describing the lands affected thereby and empowering such person to exercise the said powers or such of them as he may deem expedient, for such time and on such terms and conditions as he may determine. 36 V. c. 40, s. 6.

If the application is for the public good, Judge to grant an order.

8. In and by such order the said Judge shall state the height to which such dam may be built, and he shall assess the sum to be paid as the value of the land to be taken or used, and of the damages, if any, which ought to be paid as compensation by such person for any injury thereby done, and shall make such order as to costs as to him seems just, and such costs shall be the same as in ordinary proceedings in the County Court, and shall be taxed by the Clerk thereof. 36 V. c. 40, s. 7.

Nature of the Judge's order.

9. The money, or sum assessed, together with the costs awarded, if any, shall be paid to the person entitled thereto, according to such award, or paid into the Court of Chancery, as the said Judge may direct, before the powers aforesaid, or any of them are exercised, and within sixty days after the said award is made; and if the same are not so paid within the said time, the said order may be proceeded upon as if it had been made in any suit or cause, in the County Court, or in either of Her Majesty's Superior Courts of Common Law; or the said order may, at the option of the parties entitled to receive the sums awarded, or of any of them, be set aside and vacated. 36 V. c. 40, s. 8.

Payment of amount awarded.

Setting aside order.

10. Upon the payment of the sum awarded and costs if any as aforesaid, the person obtaining such order shall be entitled to a conveyance of the lands or the rights (as the case may be,) mentioned in the order; and in case of dispute, such

Conveyance of the lands.



conveyance shall be settled by the said Judge, and such person shall be further entitled to have and exercise such of the privileges mentioned in the first section of this Act as he is authorized in and by such order to exercise. 36 V. c. 40, s. 9.

Registration  
of Judge's  
order.

**11.** The order of the Judge may, upon the mere production thereof, be entered and registered in the Registry Office of the County or other Registration Division in which the said lands or any of them are situate; and shall operate and may be pleaded as an effectual bar to any action, suit or proceeding brought in any Court in this Province in respect of the said lands or any part thereof. 36 V. c. 40, s. 14.

Attendance of  
witnesses.

**12.** The said Judge shall have the same and like powers as to compelling the attendance and examination of witnesses, the production of documents and otherwise as are possessed by him, or by any County Court, in any cause, suit, matter, or other proceeding carried on or pending in such County Court 36 V. c. 40, s. 12.

Judge's fees.

**13.** The said Judge shall be entitled for his services to have and receive to his own use the like fees as are allowed to professional arbitrators. 36 V. c. 40, s. 10.

The case of  
two claiming  
the powers  
under this Act.

**14.** In case two or more persons claim to exercise the powers conferred by this Act, in respect of the same water privilege or any part thereof, the County Judge may impose such terms as he may deem just, and limit a time within which the person whose application he allows shall construct the necessary works, and actually use such water privilege. 38 V. c. 27, s. 2. (4)

Appeal.

**15.** Subject to the provisions hereinafter contained, there shall be an appeal from the final order or judgment of the County Judge on any application under this Act, to the Court of Appeal, or to any one of the Judges of the said Court; but any appeal to a single Judge may in his discretion be referred (on a special case to be settled) to the Court, and on such terms in the mean time as he may think necessary and fit; the decision of the Judge upon any question of fact or other question shall be open to revision by the Court or Judge to which the appeal is had. 38 V. c. 27, s. 2 (5); 40 V. c. 7, *Sched. A* (132).

Leave to ap-  
peal and  
practice.

**16.** Such appeal shall not be permitted without leave of one of the Judges of the said Court, and the application for such leave shall be made within ten days from the day on which the order or judgment appealed from is made or rendered; and the Judge to whom such application is made shall determine the time within which the appeal, if permitted, shall be set down to be heard, the security to be given by the appellants and the persons upon whom notice of the appeal shall be served and all such other matters as he may deem necessary for the most

speedy and least expensive determination of the matter of the appeal. 38 V. c. 17, s. 2 (6); 40 V. c. 7, *Sched. A* (133).

**17.** If such appeal is not set down to be heard within the time limited for that purpose, or if the other conditions imposed are not complied with, the appeal shall be deemed to have been abandoned. 38 V. c. 27, s. 2 (7).

Non-compliance with conditions of appeal an abandonment.

**18.** The costs of the appeal shall be in the discretion of the Court or Judge to which the appeal is had; and the practice and proceedings upon such appeal shall, except so far as is herein or may be by the Judge to whom the application for leave is made, otherwise provided, be similar to the practice and proceedings upon appeals from County Courts. 38 V. c. 27, s. 2 (8).

Costs and practice on appeal.

**19.** No pond created or partly created under the authority of this Act shall exceed in extent twenty acres, unless the Judge of the County Court having jurisdiction, as hereinafter mentioned, by an order to be made by him orders and directs otherwise; and in and by any such order the Judge shall fix the extent of such pond. 36 V. c. 40, s. 3.

Ponds created not to exceed twenty acres, unless on order of County Judge.

**20.** No occupied mill privilege or water power shall be in any manner interfered with or encroached upon under the authority of this Act without the consent of the owner thereof. 36 V. c. 40, s. 2.

Occupied mill privilege not to be interfered with.

**21.** No such dam may be erected, or other powers exercised to the injury of any mill lawfully existing, either above or below it on the stream, nor shall the privilege of such owner be affected by the erection thereof. 36 V. c. 40, s. 11.

Existing mill not to be injured.

**22.** This Act shall not authorize the navigation of any stream or river to be interfered with, and shall not authorize any stream of water to be so obstructed by the construction of any such works as aforesaid as to prevent timber or logs floating, down such stream during high water. 36 V. c. 40, s. 13.

Obstructing navigation and the floating of timber.

## CHAPTER 115.

## An Act respecting Rivers and Streams.

---

Floating timber down streams, s. 1.	Not to apply in certain cases, ss.
Injuring dams, s. 2.	5-7.
Conditions on which timber may be floated down certain rivers, s. 3.	How recovered, s. 8.
Penalties for obstructing rivers, &c., s. 4.	Appropriation of penalties, s. 9.
	Assessed damages to private property how applied, s. 10.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

## FLOATING TIMBER, ETC., DOWN STREAMS.

All persons  
may float saw  
logs, etc.,  
down streams.

**1.** So far as the Legislature of Ontario has authority so to enact—all persons may, during the spring, summer and autumn freshets, float saw-logs and other timber, rafts and crafts down all streams ; and no person shall, by felling trees or placing any other obstruction in or across any such stream, prevent the passage thereof. C. S. U. C. c. 48, s. 15.

Persons using  
streams not to  
injure dams,  
&c.

**2.** In case there is a convenient apron, slide, gate, lock, or opening in any such dam or other structure made for the passage of saw-logs and other timber, rafts and crafts authorized to be floated down such stream as aforesaid, no person using any such stream in manner and for the purposes aforesaid, shall alter, injure or destroy any such dam or other useful erection in or upon the bed of or across the stream, or do any unnecessary damage thereto or on the banks thereof. C. S. U. C. c. 48, s. 16.

Conditions on  
which timber  
may be cut on  
the banks of  
certain rivers  
and floated  
thereon.

**3.** Except in the case of round or squared timber, or of trees, masts, staves, deals, boards or other sawed or manufactured lumber or saw logs, prepared for transportation to a market, every person and every employer of such person, who cuts and fells any trees into the Grand River, the River Thames, River Nith, River Speed, Otter Creek, the River Credit, the River Otonabee from Sturgeon Lake to Rice lake ; the River Scugog, the River Trent from Rice Lake to the Bay of Quinte, Crow River, the Rivers Gananoque, Rideau, Petite Nation, Tay, Mississippi, Bonnechere, Madawaska and Goodwood in Ontario, or upon such parts of the banks thereof as are usually over-

flowed in the autumn or spring of the year by the rising of the water of the said rivers or creek, and who does not lop off the branches of such trees and cut up the trunks thereof into lengths of not more than eighteen feet, before they are allowed to be floated or cast into the said rivers or streams shall for every such offence forfeit and pay a penalty not exceeding ten dollars. C. S. U. C. c. 47, s. 1. [See also 35 V. c. 36 (D.)]

4. Subject to any jurisdiction of the Dominion of Canada in this behalf and to any Acts passed in the exercise of such jurisdiction—in case any person throws, or in case any owner or occupier of a mill suffers or permits to be thrown, into any river, rivulet or water-course, excepting those hereinafter mentioned, any slabs, bark, waste stuff or other refuse of any saw-mill (except saw dust,) or any stumps, roots, shrubs, tan-bark or waste wood, or leached ashes; or in case any person fells, or causes to be felled, in or across any such river, rivulet or water-course, any timber or growing or standing trees, and allows the same to remain in or across such river, rivulet or water-course, he shall incur a penalty not exceeding twenty dollars and not less than twenty cents for each day during which such obstruction remains in, over, or across such river, rivulet or water-course, over and above all damages arising therefrom. C. S. C. U. c. 47, s. 2.

Penalty on persons obstructing rivers and rivulets.

5. This Act shall not apply to any dam, weir or bridge erected in or over any such river, rivulet or water-course, or to any thing done *bona fide* in or for erecting the same, or to any tree cut down or felled across any such river, rivulet or water-course, for the purpose of being used as a bridge from one side thereof to the other; provided such tree does not impede the flow of water or the passing of rafts. C. S. U. C. c. 47, s. 3.

Act not to extend to dams, weirs or trees used as bridges.

6. This Act shall not extend to the River St. Lawrence, nor to the River Ottawa, nor to any river or rivulet wherein salmon, pickerel, black bass, or perch, do not abound. C. S. U. C. c. 47, s. 4.

Rivers where salmon, pickerel, black bass or perch do not abound not included.

7. No such obstruction happening without the wilful default of any party, or in the *bona fide* exercise of his rights, shall subject him to any fine or forfeiture unless upon default to remove the obstruction after notice and reasonable time afforded for that purpose. C. S. U. C. c. 47, s. 5.

As to obstructions not wilful.

8. All fines, penalties, forfeitures and damages under this Act, when not together exceeding twenty dollars, may respectively, upon the oath of one credible witness, be recovered with costs, in a summary way in the manner provided by *The Act respecting Summary Convictions before Justices of the Peace*, before any one or more of the Justices of the Peace for the County in which the offence has been committed, and unless the conviction is appealed from, if the fine or penalty and damages

How fines to be recovered.

Rev.Stat.c.74.



(as the case may be), together with the costs, are not paid at the time stated in the conviction, the convicting Justice or Justices, or one of them, when more than one, shall issue his or their warrant of distress to levy the same out of the goods and chattels of the offender; and in case there are not sufficient goods and chattels found to satisfy the same, and in case the offender does not otherwise satisfy the amount within three days after conviction, then such Justice or Justices (as the case may be) shall by warrant under hand and seal commit the offender to the common gaol of the County in which he has been convicted, for the term of ten days in case the conviction is under the third section of this Act, or thirty days in case the conviction is under the fourth section of this Act, unless the fine, penalty or forfeiture and damages (as the case may be,) and costs, are sooner paid. C. S. U. C. c. 47, s. 6.

Appropriation  
of penalties.

**9.** Of pecuniary penalties levied under this Act, one third shall go to the informer, and the other two thirds shall be paid to the Treasurer of the Municipality in which the offence was committed, and shall be expended in improving the public highways therein. C. S. U. C. c. 47, s. 8.

Assessed dam-  
ages how to  
be applied.

**10.** In case of damages to private property arising out of a violation of this Act, such damages may, at the request of the party aggrieved, be assessed by the convicting Justice or Justices, and included in the conviction, when such damages, together with the fine or penalty imposed, do not together exceed twenty dollars; and in case damages are assessed the same shall be paid to the party aggrieved, except in cases where he has been examined in proof of the offence, in which case the same shall be applied to the improvement of the public highways in the Municipality as above provided. C. S. U. C. c. 47, s. 9.

---

## TITLE IX.

## MERCANTILE LAW.

CHAP. 116—Mercantile Amendment Act, p. 1115.

“ 117—Written Promises. p. 1121.

“ 118—Fraudulent Preference of creditors, p. 1124.

“ 119—Chattel mortgages and sales of personal property, p. 1126.

“ 120—Mechanics' liens, p. 1133.

“ 121—Agents for sale, &amp;c. of goods, p. 1140.

“ 122—Limited Partnerships, p. 1144.

“ 123—Registration of Partnerships, p. 1149.

## CHAPTER 116,

## An Act to amend the Mercantile Law.

Short title, s. 1.

Sureties :

Where paying principal's debt to  
be entitled to securities, remedies,  
&c. of the creditor, ss. 2, 3.Rights, *inter se*, s. 4.

Bills of lading :

Rights under, transferable by endorsement,  
s. 5 (1) (2).Conclusive as against the signer,  
s. 5 (3).*Choses in Action* :

“ Assignee” defined, s. 6.

Debts and *choses in action* assignable,  
s. 7.Bonds, &c., of corporations assignable,  
s. 8.

Pleadings in actions on, s. 9.

Right to set off, &c., when preserved,  
s. 10, 11.Act not to apply to bills and notes  
s. 12.Warehouse receipts, &c., as collateral  
security, ss. 13-18.

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows :—

1. This Act may be cited as “ *The Mercantile Amendment Act*.”

2. Every person who, being surety for the debt or duty of another or being liable with another for any debt or duty, pays such debt or performs such duty, shall be entitled to have assigned to him or a trustee for him, every judgment, specialty, or other security which is held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security be or be not deemed at law to have been satisfied by

Right of sureties paying the principal debt, &c., to assignment.

the payment of the debt or the performance of the duty.\* 26 V. c. 45, s. 2.

And to remedies on such assignment.

3. Such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be and on proper indemnity, to use the name of the creditor in any action or other proceeding at Law or in Equity, in order to obtain from the principal debtor or any co-surety, co-contractor or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who has so paid such debt or performed such duty; and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him. 26 V. c. 45, s. 3.

What only one co-surety, &c., may recover from another.

4. No co-surety, co-contractor or co-debtor shall be entitled to recover from any other co-surety, co-contractor or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last mentioned person is justly liable. 26 V. c. 45, s. 4.

#### BILLS OF LADING.

Preamble.

5. Whereas by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property; and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bona fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid;

Therefore it is enacted as follows;

Rights and liabilities of consignees and endorsees of bills of lading. Imp. Act. 18-19 V. c. 111.

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes upon or by reason of such consignment or endorsement, shall have transferred to, and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made to himself. 33 V. c. 19, s. 1.

Certain rights and liabilities not affected.

2. Nothing in this section contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement. 33 V. c. 19, s. 2.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel or train shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading has actual notice at the time of receiving the same that the goods had not in fact been laden on board, or unless such bill of lading has a stipulation to the contrary; but the master or other person so signing, may exonerate himself in respect to such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or of some person under whom the holder claims. 33 V. c. 19, s. 3.

Bills of lading as evidence against signer.

CHOSSE IN ACTION ASSIGNABLE.

6. In the five next succeeding sections of this Act,

"Assignee" shall include any person now being or hereafter becoming entitled by any first or subsequent assignment, or any derivative or other title, to a *chose in action*, and possessing at the time of action brought the beneficial interest therein, and the right to receive and to give an effectual discharge for the moneys, or the charge, lien, incumbrance, or other obligation thereby secured. 35 V. c. 12, s. 3.

Interpretation of the word Assignee.

7. Every debt and *chose in action* arising out of contract shall be assignable at law by any form of writing, but subject to such conditions or restrictions with respect to the right of transfer as are contained in the original contract; and the assignee thereof, shall sue thereon in his own name in such action, and for such relief as the original holder or assignor of such *chose in action* would be entitled to sue for in any Court of Law in this Province. 35 V. c. 12, s. 1.

Choses in action made assignable.

Assignee of chose in action may sue in his own name.

8. The bonds or debentures of corporations made payable to bearer, or to any person named therein or bearer, may be transferred by delivery, and if payable to any person or order shall (after general endorsement thereof by such person) be transferable by delivery from the time of such endorsement.

Bonds of corporations.

2. Any such transfer shall vest the property of such bonds or debentures in the holder thereof to enable him to maintain an action thereon in his own name. 35 V. c. 12, s. 2; C. S. C., c. 84, s. 14.

9. The plaintiff in any action or suit where the assignment is required by this Act to be in writing may claim as assignee of the original party or first assignor, setting forth briefly the various assignments under which the said *chose in action* has become vested in him; but in all other respects the pleadings and proceedings in such action shall be as if the action was instituted in the name of the original party or first assignor. 35 V. c. 12, s. 4.

Pleadings and proceedings.



Original right  
of set-off and  
defences, con-  
tinued.

**10.** In case of any assignment of a debt or *chose in action* arising out of contract, and not assignable by delivery, such transfer shall be subject to any defence, or set-off, in respect of the whole or any part of such claim as existed at the time of, or before notice of the assignment to the debtor or other person sought to be made liable, in the same manner and to the same extent as such defence would be effectual, in case there had been no assignment thereof; and such defence or set-off shall apply as between the debtor and any assignee of such debt or *chose in action*. 35 V. c. 12, s. 5.

Assignee enti-  
tled free from  
*contra* claims  
to arise after  
notice to the  
person liable.

**11.** In case of any assignment in writing as aforesaid, and notice thereof given to the debtor or other person liable in respect of a *chose in action*, arising out of contract, the assignee shall have, hold, and enjoy the same, free from any claims, defences, or equities which might arise after such notice as against his assignor. 35 V. c. 12, s. 6.

Secs. 6-11 not  
to apply to  
bills and notes.

**12.** The six next preceding sections of this Act shall not be construed to apply to bills of exchange or promissory notes. 35 V. c. 12, s. 7.

#### WAREHOUSE RECEIPTS, &C., AS COLLATERAL SECURITY.

Interpretation  
clause.

**13.** The words "goods, wares and merchandise" when used in the following sections of this Act, shall, except where otherwise expressly provided in said sections, be held to comprise, in addition to the things usually understood thereby, timber, boards, deals, staves and other lumber. *See* 29 V. c. 19.

Cove receipts,  
etc., may be  
transferred by  
endorsement  
as collateral  
security.

**14.** Any cove receipt, bill of lading, specification of timber, or any receipt given by a cove keeper, miller, or by the keeper of a warehouse, wharf, yard, harbour or other place, for cereal grains, goods, wares or merchandise laid up, stored or deposited, or to be laid up, stored or deposited in or on the cove, mill, warehouse, wharf, yard, harbour or other place in this Province, of which he is keeper, or any bill of lading or receipt given by a master of a vessel, or by a carrier for carrying cereal grains, goods, wares or merchandise shipped in such vessel or delivered to such carrier for carriage from any place whatever, to any part of this Province or through the same, or on the waters bordering thereon, or from the same to any other place whatever, and whether such cereal grains are to be delivered upon such receipt *in specie* or converted into flour, may, by endorsement thereon by the owner of, or person entitled to receive such cereal grains, goods, wares or merchandise, or his attorney or agent, be transferred to any private person as collateral security for any debt due to such private person, and being so endorsed shall vest in such private person from the date of such endorsement, all the right and title of the endorser to or in such cereal grains, goods, wares or merchandise, subject to the right of the endorser to have the same re-transferred to him, if such debt is paid when due; And in the event of the non-payment of such debt when due, such private person may sell the said cereal grains, goods, wares or

And may sell  
the goods if  
such bills are  
not duly paid,  
returning sur-  
plus, &c.

merchandise, and retain the proceeds or so much thereof as will be equal to the amount due to the private person upon such debt, with any interest or costs, returning the overplus, if any, to such endorser. C. S. C. c. 54, s. 8; 29 V. c. 19, s. 1.

[Section 10 of C. S. C. c. 54, enacts as follows:—

10. The sixty-eighth, sixty-ninth and seventieth sections of the Consolidated Statute of Canada, chapter ninety-two, respecting offences against persons and property, shall be applicable and shall be applied to all false bills of lading, receipts or documents in the eighth section of this Act mentioned, and any person or persons knowingly giving, accepting, transmitting and using the same, shall be subject to all the pains and penalties imposed by the said sixty-eighth, sixty-ninth and seventieth sections of that Act or by any of them in respect of the receipts therein specified. 22 V. (1859) c. 20, s. 2.]

Sects. 68, 69, 70, of C. S. C. c. 92, to apply to cases under this Act.

15. Where any person engaged in the calling of cove keeper miller, or of keeper of any warehouse, wharf, yard, harbour or other place, master of a vessel or carrier, by whom a receipt or bill of lading may be given in such his capacity, as hereinbefore mentioned, for cereal grains, goods, wares or merchandise, is at the same time the owner of or entitled himself (otherwise than in his capacity of cove-keeper, miller, or of keeper of a warehouse, wharf, yard, harbour or other place, or of master of a vessel or carrier) to receive such cereal grains, goods, wares or merchandise, any such receipt or bill of lading, or any acknowledgment or certificate intended to answer the purpose of such receipt or bill of lading, given and endorsed by such person, shall be as valid and effectual for the purposes of this Act, as if the person giving such receipt or bill of lading, acknowledgment or certificate, and endorsing the same, were not one and the same person. 24 V. c. 23, s. 1; 29 V. c. 19, s. 2.

Cove keeper, etc., owning or being entitled to the goods, may give a certificate of the fact and endorse it.

[By 24 V. c. 23, s. 1, the following enactment is added:—

And the wilfully making any false statement in any such receipt, acknowledgement or certificate, or the wilfully alienating, or parting with, or not delivering to the holder or endorsee, of any cereal grains, goods, wares or merchandise mentioned in such receipt, acknowledgement or certificate contrary to the undertaking therein expressed or implied, shall be a misdemeanor punishable in like manner as any misdemeanor mentioned in section sixty-eight of chapter ninety-two of the said Consolidated Statutes.]

Penalty for false statement, &c.

C. S. C. c. 92, s. 68.

16. No such cereal grains, and no such goods, wares or merchandise (other than timber, boards, deals, staves or other lumber), shall be held in pledge by such private person for any period exceeding six months; and no transfer of any such bill of lading, specification of timber or receipt, shall be made under this Act to secure the payment of any debt, unless such debt is contracted at the same time with the endorsement of such bill of lading, specification of timber or receipt; and further, no sale of any cereal grains or of goods, wares or merchandise, (other than timber, boards, deals, staves or other lumber,) shall take place under this Act until and unless ten days' notice of the time and

Goods not to be held beyond a certain time.

At what time any such security must be transferred.

Goods not to be sold without notice to the owner.

Timber, &c.,  
not to be held  
beyond twelve  
months.

place of such sale has been given by registered letter transmitted through the post office, to the owner of such cereal grains or such goods, wares or merchandise, (other than as aforesaid) prior to the sale thereof. C. S. C. c. 54, s. 9.

Receipt to be  
endorsed when  
debt is con-  
tracted.

Timber, &c.,  
not to be sold  
without notice  
to owner.

**17.** No timber, boards, deals, staves, or other lumber, shall be held in pledge by such private person, for any period exceeding twelve calendar months; and no transfer of any such receipt or bill of lading shall be made under this Act to secure the payment of any debt, unless such debt is contracted at the same time with the endorsement of such receipt or bill of lading: and further, no sale of any timber, boards, deals, staves or other lumber, shall be made under this Act, until and unless thirty days' notice of the time and place of such sale has been given, by registered letter transmitted through the post office, to the owner of such timber, boards, deals, staves, or other lumber prior to the sale thereof.

Sale to be by  
public auction,  
after notice.

**2.** Every such sale shall be made by public auction, after notice thereof by advertisement, stating the time and place thereof, for at least eight days consecutively, in at least two daily newspapers published in or nearest to the place where such sale is to be made.

**3.** A daily newspaper shall be deemed to be published nearest to a place if no two other daily newspapers are published in or nearer to such place;

In places  
where a daily  
newspaper is  
published.

**4.** If in any place where any such sale by auction is to be made, there is not any newspaper published daily, but some newspaper or newspapers is or are published there less often than daily, then such advertisement shall also be published in every issue of such local newspaper, or of at least one of such local newspapers, during the time of its being published in daily newspapers. 29 V. c. 19, s. 3.

Advance on  
cove receipts,  
&c., to give a  
first lien on  
timber, &c.

**18.** All advances made on the security of any such cove receipt, bill of lading, specification, receipt, acknowledgment or certificate as aforesaid, shall give and be held to give to the person making such advances, a claim for the repayment of such advances on the cereal grains, goods, wares or merchandise therein mentioned, prior to and by preference over the claim of any unpaid vendor or other creditor, save and except claims for wages of labour performed in making and transporting any such timber, boards, deals, staves or other lumber, 24 V. c. 23, s. 2; 29 V. c. 19, s. 4

[Sections 5 and 6, of 29 V. c. 19, enact as follows:—

Sections 68, 69  
and 70 of Con.  
Stat. Can. cap.  
92, to apply to  
cases under  
this Act.

**5.** The sixty-eighth section of chapter ninety-two of the Consolidated Statutes of Canada "*respecting offences against persons and property,*" shall be applicable and shall be applied to all false receipts or documents of the kinds in the first and second sections of this Act mentioned; and any person or persons knowingly giving, accepting, transmitting and

using the same, shall be subject to all the pains and penalties imposed by that Act in respect of the receipts therein specified ; and the wilfully making any false statement in any such receipt, bill of lading, acknowledgment or certificate, or the wilfully alienating or parting with, or not delivering to the holder or indorser any timber, boards, deals, staves or other lumber mentioned in such receipt, bill of lading, acknowledgment or certificate, contrary to the undertaking therein expressed or implied, shall be a misdemeanor, punishable in like manner as any misdemeanor mentioned in section sixty-eight of the said chapter ninety-two of the said Consolidated Statutes.

6. If any offence in the last preceding section mentioned, be committed by the doing of anything in the name of any firm, company or copartnership of persons, the person by whom such thing is actually done, or who connives at the doing thereof, shall be deemed guilty of the offence, and not any other person.] If the offence be committed in the name of a firm.

## CHAPTER 117.

### An Act respecting Written Promises and Acknowledgments of Liability.

Written acknowledgment, &c., required to take case out of Statute of Limitations in certain cases, s. 1.	Set off within Statutes of Limitations, s. 7.
Acknowledgment, &c., by one of several joint contractors, s. 2.	Ratification of promise made during infancy to be in writing, s. 8.
Recovery against joint contractors, against whom the right of action not barred, s. 3.	Representation as to credit or character, s. 9.
Non-joinder of those against whom right of action barred, ss. 4, 5.	Consideration for a guaranty need not appear in writing, s. 10.
Endorsements by payee on a bill or note, s. 6.	Section 17 of The Statute of Frauds, extended to goods to be delivered at a future time, s. 11.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows—

1 In all actions :

(a) Of account and upon the case other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants ; In certain actions.

(b) On simple contract or of debt grounded upon any lending or contract without specialty ; and

(c) Of debt for arrearages of rent ;

no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby Written memorandum required to take



the case out of to take any case out of the operation of the Act, passed in the Statute of England in the twenty-first year of the Reign of King James Limitations. 21 Jac. i, c. 16. the First, respecting such actions as aforesaid, or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing signed by the party chargeable thereby, or by his agent duly authorized to make such acknowledgment or promise. C. S. U. C. c. 44, s. 2; 26 V. c. 45, s. 8.

Case of two or more joint contractors or executors.

2. Where there are two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the said Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them, or by reason of any payment of any principal or interest made by any other or others of them. C. S. U. C. c. 44, s. 3.

Where plaintiff may be barred as to one or more defendants but not as to all.

3. In actions commenced against two or more such joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by the said Act of King James the First or by this Act, as to one or more of such joint contractors, or executors or administrators, is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment as aforesaid, judgment shall be given and costs allowed for the plaintiff as to such defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff. C. S. U. C. c. 44, s. 4.

As to non-joinder of defendants who have good defence under the said Act and this Act

4. If upon a plea in abatement in any such action for the non-joinder of any person or persons, who, it is alleged, ought to have been sued jointly, it appears at the trial or otherwise, that the action could not, by reason of the said Act of King James or this Act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the finding and judgment on such plea shall be against the party pleading the same. C. S. U. C. c. 44, s. 5.

As to costs in new action.

5. If after the pleading of such plea, the plaintiff, instead of proceeding in the action, abandons or discontinues the same, and commences a new action against the defendant or defendants who pleaded such plea, and the person or persons named therein as jointly liable with such defendant or defendants, and if it appears upon the trial or pleadings in such new action that such action could not, by reason of the said Act of King James or of this Act, be maintained against the person or persons named in the said plea in abatement and joined in the said new action, but against the original defendant or defendants alone, the plaintiff shall thereupon be entitled to recover against the original defendant or defendants in the said new action as well the costs of the original action so abandoned or discontinued on

such plea in abatement, as the costs awarded to such other defendant or defendants so joined in the said action by reason of the pleading of such plea, in addition to the debt or damages and costs recoverable against the said original defendant or defendants; and the said other defendant or defendants so joined in the said new action, and not liable therein, shall recover his or their costs against the plaintiff. C. S. U. C. c. 44, s. 6.

**6.** No endorsement or memorandum of any payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment has been made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the said Statute of King James. C. S. U. C. c. 44, s. 7.

Endorsement, &c., made by the payee not to take a note, &c., out of the statute.

**7.** The said Act of King James and this Act, shall apply to the case of any debt on simple contract, or of the nature hereinbefore mentioned, alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise. C. S. U. C. c. 44, s. 8.

Statute to apply to set-off.

**8.** No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification is made by some writing signed by the party to be charged therewith, or by his agent duly authorized to make such promise or ratification. C. S. U. C. c. 44, s. 9; 26 V. c. 45, s. 8.

As to ratification of promise made during non-age.

**9.** No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain money, goods or credit thereupon, unless such representation or assurance is made in writing signed by the party to be charged therewith. C. S. U. C. c. 44, s. 10.

As to representation regarding the character, credit, etc. of a third party.

**10.** No special promise made by any person to answer for the debt, default or miscarriage of another person, being in writing and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit or other proceeding to charge the person by whom such promise has been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document. 26 V. c. 45, s. 1.

Consideration for promises to answer for another need not be in writing.

**11.** The seventeenth section of the Act passed in England in the twenty-ninth year of the Reign of King Charles the Second, entitled, "*An Act for the prevention of Frauds and Perjuries*,"

Statute of Frauds, 29 Car. ii, c. 3, extended to contracts

for goods to be delivered at a future time.

shall extend to all contracts for the sale of goods of the value of forty dollars and upwards, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery. C. S. U. C. c. 44, s. 11.

## CHAPTER 118.

### An Act respecting the Fraudulent Preference of Creditors by persons in insolvent circumstances.

Confessions of judgment, *cognovits*, &c., in fraud of creditors to be void, s. 1.

Assignments, &c., in fraud of creditors to be void, s. 2.

Destroying, &c., books to defraud creditors to be a misdemeanor, C. S. U. C. c. 26, s. 19.

Assignment or concealing of good to defraud creditors to be a misdemeanor, C. S. U. C. c. 26, s. 20.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Confessions or warrants to confess judgments given by insolvents to defeat or delay creditors or to give one preference over the other to be void.

**1.** In case any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem* or warrant of attorney to confess judgment with intent, in giving such confession, *cognovit actionem* or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part or with intent thereby to give one or more of the creditors of any such person a preference over his other creditors, or over any one or more of such creditors, every such confession, *cognovit actionem* or warrant of attorney to confess judgment, shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution. C. S. U. C. c. 26, s. 17.

Assignments, transfers, &c., made by in-

**2.** In case any person, being at the time in insolvent circumstances or unable to pay his debts in full, or knowing him-

self to be on the eve of insolvency, makes or causes to be made any gift, conveyance, assignment or transfer of any of his goods, chattels or effects, or delivers or makes over, or causes to be delivered or made over any bills, bonds, notes or other securities or property, with intent to defeat or delay the creditors of such person, or with intent to give one or more of the creditors of such person a preference over his other creditors, or over any one or more of such creditors, every such gift, conveyance, assignment, transfer or delivery shall be null and void as against the creditors of such person; but nothing herein contained shall invalidate or make void any deed of assignment made and executed by any debtor for the purpose of paying and satisfying rateably and proportionably, and without preference or priority, all the creditors of such debtor their just debts; and nothing herein contained shall invalidate or make void any *bona fide* sale of goods in the ordinary course of trade or calling to innocent purchasers. C. S. U. C. c. 26, s. 18.

solvents to defeat creditors or to give preference shall be void.

[Sections 19 and 20 of C. S. U. C. c. 26, are as follows :

19. Any person who destroys, alters, mutilates, or falsifies any of his books, papers, writings or securities, or makes or is privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, or any one or more of them, shall be deemed guilty of a misdemeanor, and on being convicted thereof, shall be liable to be imprisoned in any common gaol for any term not exceeding six months, and such offence may be tried before any Court of Oyer and Terminer or General Gaol Delivery. 22 V. c. 96, s. 20.

Destroying or altering books, &c., to defraud creditors to be a misdemeanor.

Punishment.

20. Any person who makes or causes to be made any gift, conveyance, assignment, sale, transfer or delivery of any of his lands, hereditaments, goods or chattels, or who removes, conceals or disposes of any of his goods, chattels, property or effects of any description with intent to defraud his creditors or any of them, and any person who receives such property, real or personal, with such intent, shall be deemed guilty of a misdemeanor, and on being convicted thereof, shall be liable to be imprisoned for any term not exceeding twelve months, and to be fined in any sum not exceeding eight hundred dollars, and such offence may be tried before any Court of Oyer and Terminer or General Gaol Delivery. 22 V. c. 96, s. 21.]

Making assignments or concealing or disposing of goods to defraud creditors to be a misdemeanor.

Punishment.



## CHAPTER 119.

## An Act respecting Mortgages and Sales of Personal Property.

---

Chattel mortgages where possession of goods unchanged:	Where goods removed, copy of mortgage, &c., to be filed in that County where goods are, s. 9.
To be registered or void as against creditors, ss. 1-4.	Renewal of mortgages, s. 10.
Affidavit as to indebtedness of mortgagor to be filed, s. 2.	Affidavit on renewal by whom may be made, s. 11.
Sales of goods where possession unchanged:	Certificate of Clerk to be evidence of registration, s. 12.
To be registered or void as against creditors, s. 5.	Discharge of mortgages, ss. 13-16.
Mortgages of goods to secure advances, s. 6.	Mortgages, &c., in Districts, ss. 17-21.
Mode of registration, ss. 7, 8.	Fees of Clerk, s. 22.
	Miscellaneous, ss. 23-25.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

REGISTRATION OF CHATTEL MORTGAGES AND SALES OF GOODS  
WHERE POSSESSION IS UNCHANGED.

Mortgages of goods not attended with change of possession, shall, be registered, or else be void as against creditors, &c., of the mortgagor, with an affidavit, &c.

1. Every mortgage, or conveyance intended to operate as a mortgage, of goods and chattels, made in Ontario, which is not accompanied by an immediate delivery, and an actual and continued change of possession of the things mortgaged, or a true copy thereof, shall, within five days from the execution thereof, be registered as hereinafter provided, together with the affidavit of a witness thereto, of the due execution of such mortgage or conveyance, or of the due execution of the mortgage or conveyance of which the copy filed purports to be a copy, and also with the affidavit of the mortgagee or of one of several mortgagees, or of the agent of the mortgagee or mortgagees, if such agent is aware of all the circumstances connected therewith and is properly authorized in writing to take such mortgage (in which case a copy of such authority shall be registered therewith). C. S. U. C. c. 45, s. 1 ; 40 V. c. 7, *Sched. A.* (134).

Contents of affidavit.

2. Such last mentioned affidavit, whether of the mortgagee or his agent, shall state that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that it was executed in good faith and for the express purpose of securing the payment of money

justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him. C. S. U. C. c. 45, s. 2.

3. Every such mortgage or conveyance shall operate and take effect upon, from and after the day and time of the execution thereof. 26 V. c. 46, s. 1.

4. In case such mortgage or conveyance and affidavits are not registered as hereinbefore provided, the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith for valuable consideration. C. S. U. C. c. 45, s. 3.

Unless registered, mortgage void.

5. Every sale of goods and chattels, not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Act, and shall be accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the bargainee, or his agent duly authorized in writing to take such conveyance (a copy of which authority shall be attached to such conveyance), that the sale is *bona fide* and for good consideration, as set forth in the said conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, and such conveyance and affidavits shall be registered as hereinafter provided, within five days from the executing thereof, otherwise the sale shall be absolutely void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith. C. S. U. C. c. 45, s. 4.

Sales of goods not attended with delivery shall be registered, or else be void as against creditors, &c., of the vendor.

6. In case of an agreement in writing for future advances for the purpose of enabling the borrower to enter into and carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement, and in case of a mortgage of goods and chattels for securing the mortgagee repayment of such advances, or in case of a mortgage of goods and chattels for securing the mortgagee against the endorsement of any bills or promissory notes or any other liability by him incurred for the mortgagor, not extending for a longer period than one year from the date of such mortgage, and in case the mortgage is executed in good faith, and sets forth fully by recital or otherwise, the terms, nature and effect of the agreement, and the amount of liability intended to be created, and in case such mortgage is accompanied by the affidavit of a witness thereto of the due execution thereof, and by the affidavit of the mortgagee, or in case the agreement has been entered into and the mortgage taken by an agent duly authorized in writing to

Mortgages of goods to secure advances or to indemnify endorsers, etc., to be valid if duly registered.

make such agreement and to take such mortgage, and if the agent is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent, such affidavit, whether of the mortgagee or his agent, stating that the mortgage truly sets forth the agreement entered into between the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage, and that such mortgage is executed in good faith and for the express purpose of securing the mortgagee repayment of his advances or against the payment of the amount of his liability for the mortgagor, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against such mortgagor, and in case such mortgage is registered as hereinafter provided, the same shall be as valid and binding as mortgages mentioned in the preceding sections of this Act. C. S. U. C. c. 45, s. 5.

Chattel mortgages to be registered in the office of County Clerk.

7. The instruments mentioned in the preceding sections shall be registered in the office of the Clerk of the County Court of the County or Union of Counties where the mortgagor or bargainor, if a resident in Ontario, resides, at the time of the execution thereof, or, if he is not a resident, then in the office of the Clerk of the County Court of the County or Union of Counties where the property so mortgaged or sold is at the time of the execution of such instrument; and such Clerks shall file all such instruments presented to them respectively for that purpose, and shall endorse thereon the time of receiving the same in their respective offices, and the same shall be kept there for the inspection of all persons interested therein, or intending or desiring to acquire any interest in all or any portion of the property covered thereby. C. S. U. C. c. 45, s. 7.

Clerk to enter the same.

8. The said Clerks respectively shall number every such instrument or copy filed in their offices, and shall enter in alphabetical order in books to be provided by them, the names of all the parties to such instruments, with the numbers endorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. C. S. U. C. c. 45, s. 8.

How to proceed if goods mortgaged are removed to another County.

9. In the event of the permanent removal of goods and chattels mortgaged as aforesaid from the County or Union of Counties in which they were at the time of the execution of the mortgage, to another County or Union of Counties before the payment and discharge of the mortgage, a certified copy of such mortgage, under the hand of the Clerk of the County Court in whose office it was first registered, and under the seal of the said Court, and of the affidavits and documents and instruments relating thereto filed in such office, shall be filed with the Clerk of the County Court of the County or Union of Counties to

which such goods and chattels are removed, within two months from such removal, otherwise the said goods and chattels shall be liable to seizure and sale under execution, and in such case the mortgage shall be null and void as against subsequent purchasers and mortgagees in good faith for valuable consideration as if never executed. C. S. U. C. c. 45, s. 9; 40 V. c. 8, s. 29.

#### RENEWAL OF MORTGAGES.

**10.** Every mortgage, or copy thereof, filed in pursuance of this Act, shall cease to be valid as against the creditors of the persons making the same, and against subsequent purchasers or mortgagees in good faith for valuable consideration, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property claimed by virtue thereof, and a full statement of the amount still due for principal and interest thereon, and of all payments made on account thereof, is again filed in the office of the Clerk of the said County Court of the County or Union of Counties wherein such goods and chattels are then situate, with an affidavit of the mortgagee or of one of several mortgagees or of the assignee, or one of several assignees, or of the agent of the mortgagee or assignee, or mortgagees or assignees, as the case may be, duly authorized in writing for that purpose (which authority shall be filed therewith), stating that such statements are true, and that the said mortgage has not been kept on foot for any fraudulent purpose. C. S. U. C. c. 45, s. 10; 40 V. c. 7, *Sched. A.* (135).

Mortgages of chattels must be periodically renewed, else cease to be valid.

**11.** The affidavit required by the tenth section may be made by any next of kin, executor or administrator of any deceased mortgagee, or by any assignee claiming by or through any mortgagee, or any next of kin, executor or administrator of any such assignee; but if the affidavit is made by any assignee, next of kin, executor or administrator of any such assignee, the assignment, or the several assignments through which such assignee claims shall be filed in the office in which the mortgage is filed, at or before the time of such refileing by such assignee, next of kin, executor or administrator of such assignee. 40 V. c. 21, s. 5.

Affidavit by whom made.

#### EVIDENCE OF REGISTRATION.

**12.** A copy of such original instrument or of a copy thereof, so filed as aforesaid, including any statement made in pursuance of this Act, certified by the Clerk in whose office the same has been filed under the seal of the Court shall be received in evidence in all Courts, but only of the fact that such instruments or copy and statement were received and filed according to the endorsement of the Clerk thereon, and of no

The Clerk's certificate to be evidence of registration.



other fact; and in all cases the original endorsement by the Clerk made in pursuance of this Act, upon any such instrument or copy, shall be received in evidence only of the fact stated in such endorsement. C. S. U. C. c. 45, s. 11.

#### DISCHARGE OF MORTGAGES.

Certificates for discharging chattel mortgages.

**13.** Where any mortgage of goods and chattels is registered under the provisions of this Act, such mortgage may be discharged, by the filing, in the office in which the same is registered, of a certificate signed by the mortgagee, his executors or administrators, in the form given in the Schedule hereto, or to the like effect. 40 V. c. 21, s. 1.

Entering certificates of discharge.

**14.** The officer with whom the chattel mortgage is filed, upon receiving such certificate, duly proved by the affidavit of a subscribing witness, shall, at each place where the number of such mortgage has been entered, with the name of any of the parties thereto, in the book kept under section eight of this Act, or wherever otherwise in the said book the said mortgage has been entered, write the words, "*Discharged by certificate number* (stating the number of the certificate)," and to the said entry such officer shall affix his name, and he shall also endorse the fact of such discharge upon the instrument discharged, and shall affix his name to such endorsement. 40 V. c. 21, s. 2.

Where mortgages have been renewed.

**15.** Where a mortgage has been renewed under section ten of this Act, the endorsement or entries required by the preceding section to be made, need only be made upon the copy filed on the last renewal, and at the entries of such copy in the said book. 40 V. c. 21, s. 3.

Entry of assignment of mortgages.

**16.** In case any registered chattel mortgage has been assigned, such assignment may, upon proof by the affidavit of a subscribing witness, be numbered and entered in the alphabetical chattel mortgage book, in the same manner as a chattel mortgage, and the proceedings authorized by the three next preceding sections of this Act may and shall be had, upon a certificate of the assignee, proved in manner aforesaid. 40 V. c. 21, s. 4.

#### MORTGAGES AND SALES OF CHATTELS IN UNORGANIZED DISTRICTS.

Registration of chattel mortgages in Provisional Judicial Districts.

**17.** When the mortgagor or bargainor named in any instrument subject to the provisions of this Act, is a resident in a Provisional Judicial District, or if such mortgagor or bargainor is not at the time of the execution of such instrument a resident in Ontario, but the personal property mortgaged or sold is within a Provisional Judicial District, then the provisions of this Act shall apply to such instrument with the substitution of "the Clerk of the District Court" for "the Clerk of the County Court;" but this section shall not apply to any

portion of a Territorial District which forms part of a Provisional Judicial District. 40 V. c. 24, s. 14.

**18.** If the mortgagor or bargainor named in any such instrument is resident in a Territorial District, or if such bargainor or mortgagor is not at the time of the execution of such instrument a resident in Ontario, but the personal property mortgaged or sold is within a Territorial District, then the provisions of this Act shall apply to such instrument, with the substitution (f "the Clerk of the first Division Court of the District" for the "Clerk of the County Court," and with the substitution of "ten days" for "five days," as the time within which the instrument or a copy thereof shall be registered. 40 V. c. 24, s. 14 (2). In Territorial Districts.

**19.** If the mortgagor or bargainor named in any such instrument is resident in the Temporary Judicial District of Nipissing, or if such bargainor or mortgagor is not at the time of the execution of such instrument a resident in Ontario, but the personal property mortgaged or sold is within the said Temporary Judicial District, then the provisions of this Act shall apply to such instrument, with the substitution of "the Clerk of the County Court of the County of Renfrew" for "the Clerk of the County Court," and with the substitution of "twenty days" for "five days," as the time within which the instrument or a copy thereof shall be registered. 40 V. c. 24, s. 14 (3). In Temporary Judicial District of Nipissing.

**20.** Every instrument executed before the first day of July, one thousand eight hundred and seventy-seven, and which, had it been executed after said day, would require registration under the preceding provisions, shall be registered on or before the first day of January, one thousand eight hundred and seventy-eight, in the manner required by the provisions of this Act, and, thereafter every such instrument which under the provisions of this Act requires renewal shall, unless duly renewed, become void in accordance with the provisions of this Act. 40 V. c. 24, s. 14 (4). Instruments executed before 1 July, 1877.

**21.** Nothing in the four preceding sections shall be used to aid in determining whether or not chapter forty-five of the Consolidated Statutes of Upper Canada was, prior to the first day of July, one thousand eight hundred and seventy-seven, in force in any Territorial, Temporary Judicial, or Provisional Judicial District. 40 V. c. 24, s. 14 (5). Saving clause,

#### FEES.

**22** For services under this Act the Clerks aforesaid shall be entitled to receive the following fees : Fees for services.

1. For filing each instrument and affidavit, and for entering the same in a book as aforesaid, twenty-five cents ;

2. For filing assignment of each instrument and for making all proper endorsements in connection therewith, twenty-five cents ;

3. For filing certificate of discharge of each instrument and for making all proper entries and endorsements connected therewith, twenty-five cents ;

4. For searching for each paper, ten cents ; and

5. For copies of any document with certificate prepared, filed under this Act, ten cents for every hundred words. C. S. U. C. c. 45, s. 14 ; 40 V. c. 21, s. 6.

#### MISCELLANEOUS.

The property  
to be well  
described.

**23.** All the instruments mentioned in this Act, whether for the sale or mortgage of goods and chattels, shall contain such sufficient and full description thereof that the same may be thereby readily and easily known and distinguished. C. S. U. C. c. 45, s. 6.

Who to  
administer the  
affidavits.

**24.** All affidavits and affirmations required by this Act shall be taken and administered by any Judge or Commissioner for taking affidavits in and for the Courts of Queen's Bench or Common Pleas, or a Justice of the Peace, and the sum of twenty cents shall be paid for every oath thus administered. C. S. U. C. c. 45, s. 12.

Act not to  
apply to mort-  
gages of ves-  
sels duly regis-  
tered.

**25.** This Act does not apply to mortgages of vessels registered under the provisions of any Act in that behalf. C. S. U. C. c. 45, s. 15.

#### SCHEDULE.

(Section 13.)

#### FORM OF DISCHARGE OF MORTGAGE.

*To the Clerk of the County Court of the County of*

I, A. B., of \_\_\_\_\_ do certify that  
has satisfied all money due on, or to grow due on a certain chattel mort-  
gage made by \_\_\_\_\_ to \_\_\_\_\_, which mortgage  
bears date the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, and  
was registered (or in case the mortgage has been renewed under section ten,  
was re-registered,) in the office of the Clerk of the County Court of the  
County of \_\_\_\_\_, on the \_\_\_\_\_, A.D. \_\_\_\_\_, as No. \_\_\_\_\_  
(here mention the day and date of registration of each assignment thereof,  
and the names of the parties, or mention that such mortgage has not been

assigned, as the fact may be); and that I am the person entitled by law to receive the money ; and that such mortgage is therefore discharged.

Witness my hand, this

day of

A.D.

One Witness stating residence }  
and occupation. }

A. B.

CHAPTER 120.

An Act to establish Liens in favour of Mechanics,  
Machinists and others.

Short title, s. 1.	In Chancery, s. 13.
Interpretation, s. 2.	Sale may be ordered, s. 14.
Lien, where to arise, s. 3.	Suits to be for all lien-holders, s.
Registration of claim, ss. 4,5.	15.
Property upon which lien to attach, s. 6.	Death of lien-holder, s. 16.
Mortgages extent to which have priority over liens, s. 7.	Where several lien-holders, <i>pro rata</i> distribution, s. 17.
Claims against lien-holders:	Arbitration, where amount of claims of sub-contractors disputed, ss. 18,19.
May be paid by owner of the premises, s. 8.	Unregistered liens, when to cease, s. 20.
Determination of, when disputed, s. 9.	Registered liens, when to cease, s.21.
Failure to pay amount awarded, s. 10.	Property affected not to be removed, s. 22.
Payments made before notice of claim to lien, s. 11.	Security in lieu of lien, ss. 23,24.
Realizing liens:	Materials for building when exempt from execution, s. 25.
In County and Division Courts, s. 12.	Registry Act not to apply, s. 26.

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of the Province of Ontario, enacts  
as follows:—

1. This Act may be cited as “*The Mechanics’ Lien Act.*”

Short title.
2. In the construction of this Act

Interpretation of words.
- “Contractor” shall mean a person contracting with or “Contractor.” employed directly by the owner for the doing of work or placing or furnishing of machinery or materials for any of the purposes mentioned in this Act:



"Sub-contractor."

(2). "Sub-contractor" shall mean a person not contracting with or employed directly by the owner for the purposes aforesaid, but contracting with or employed by the "Contractor," or under him by another "Sub-contractor;" and

"Owner."

(3). "Owner" shall extend to and include a person having any estate or interest, legal or equitable, in the lands upon or in respect of which the work is done, or materials or machinery are placed or furnished, at whose request and upon whose credit or on whose behalf or with whose privity or consent or for whose direct benefit any such work is done, or materials or machinery placed or furnished, and all persons claiming under him, whose rights are acquired after the work in respect of which the lien is claimed is commenced, or the materials or machinery furnished have been commenced to be furnished. 38 V. c. 20, s. 1.

Mechanics and others to have liens for constructing, etc.

3. Unless there is an express agreement to the contrary, every mechanic, machinist, builder, miner, labourer, contractor or other person doing work upon or furnishing materials to be used in the construction, alteration or repair of any building or erection, or erecting, furnishing or placing machinery of any kind in, upon or in connection with any building, erection or mine, shall, by virtue of being so employed or furnishing, have a lien or charge for the price of such work, machinery or materials, upon such building, erection or mines, and the lands occupied thereby or enjoyed therewith, and limited in amount to such sum as is justly due to the person entitled to such lien. 36 V. c. 27, s. 1; 38 V. c. 20, s. 2.

Statement of claim may be registered.

4. A statement of claim, in the form or to the effect in the Schedule to this Act, may be filed in the Registry Office in the County or other Registration Division in which such land is situate, before or during the progress of the work aforesaid, or within thirty days from the completion thereof, or from the supplying or placing of the machinery aforesaid.

Affidavit of verification of claim.

2. Such statement of claim shall be verified by the affidavit of the person entitled thereto, to be sworn before any Commissioner for taking affidavits in the County, and shall state :

(a) The name and residence of the claimant and of the owner of the property to be charged, and of the person for whom and upon whose credit the work is done or materials or machinery furnished, and the time or period within which the same was, or was to be, done or furnished ;

(b) The work done or materials or machinery furnished ;

(c) The sum claimed as due, or to become due ;

(d) The description of the land to be charged.

3. When such statement is so registered, the person entitled to said lien shall be deemed a purchaser *pro tanto*, and within the provisions of "*The Registry Act*." 36 V. c. 27, s. 2.

Registry Act to apply.  
Rev. Stat. c. 111.

5. The Registrar, upon payment of the fee of one dollar, shall register such claim, so that the same may appear as an incumbrance against the land therein described; and such lien shall be discharged by the Registrar on his receiving a certificate to that effect from the person entitled to said lien, and verified as required in cases of certificate of discharge of mortgage. 36 V. c. 27, s. 3.

Registration of claims.

Discharge of registration.

6. Every lien under this Act shall attach upon the estate and interest, legal or equitable, of the owner in the building, erection or mine upon or in respect of which the work is done or the materials, or machinery placed or furnished, and the land occupied thereby or enjoyed therewith; but the lien shall not in any case attach upon such estate and interest, so as to make the same or the owner thereof liable to the payment of any greater sum than the sum payable by the owner to the contractor; and in case the lien is claimed by a sub-contractor, the amount which may be claimed in respect thereof shall be limited to the amount payable to the contractor or sub-contractor (as the case may be) by whom the work has been done, or the materials or machinery have been furnished or placed. 38 V. c. 20, s. 3.

Upon what property the lien shall attach.

Proviso

2. In cases where the estate or interest charged by said lien is leasehold, the fee simple may also, with the consent of the owner thereof, be subject to said charge, provided such consent is testified by the signature of such owner upon the statement of claim at the time of the registering thereof, and duly verified. 36 V. c. 27, s. 10.

When the lien is on the leasehold, the fee may be charged in certain cases.

7. In case the land upon or in respect of which the work is done or materials or machinery are placed, is incumbered by a mortgage or other charge existing or created before the commencement of the work or the placing of the materials or machinery upon the land, such mortgage or other charge shall not have priority over the lien to any greater extent than the sum by which the selling value of the land, with such work, materials or machinery thereon, exceeds the sum by which such selling value thereof has been actually increased by the improvement caused by such work, materials, or machinery being placed thereon. 38 V. c. 20, s. 4.

Mortgaged lands.

8. All persons furnishing material to or doing labour for the person claiming a lien under this Act, in respect of the subject of such lien, who notify the owner of the premises sought to be affected thereby, within thirty days after such material is furnished or labour performed, of an unpaid account or demand against such lien-holder, for such material or labour, shall be entitled to a charge therefor *pro rata* upon any amount

Persons having claims against the lien holders.

payable by such owner under said lien; and if the owner thereupon pays the amount of such charge to the person furnishing material and doing labour as aforesaid, such payment shall be deemed a satisfaction *pro tanto* of such lien. 36 V. c. 27, s. 11

Disputes as to  
claims against  
lienholders.

**9.** In case of any dispute as to the validity or amount of such unpaid account or demand, the same shall be first determined by suit in the proper Court in that behalf, or by arbitration, under sections eighteen and nineteen at the option of the person having such unpaid account or demand against the lienholder; and during the pending of the proceedings to determine the dispute, so much of the amount of the lien as is in question therein may be withheld from the person claiming the lien. 36 V. c. 27, s. 11.

Failure to pay  
amount  
awarded.

**10.** In case the person primarily liable to the person entitled to the lien fails to pay the amount awarded within ten days after the award is made, the owner, contractor or sub-contractor may pay the same out of any moneys due by him to the person primarily liable as aforesaid, on account of the work done or materials or machinery furnished or placed in respect of which the indebtedness arose; and such payment if made after an award shall in all cases, or if made without any arbitration having been previously had or dispute existing, then, if the indebtedness in fact existed, and to the extent thereof, operate as a discharge *pro tanto* of the moneys so due as aforesaid to the person primarily liable. 38 V. c. 20 s. 8.

Payments  
made before  
notice of claim  
of lien.

**11.** All payments made in good faith by the owner to the contractor, or by the contractor to the sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing by the person claiming the lien has been given to such owner, contractor or sub-contractor (as the case may be), of the claim of such person, shall operate as a discharge *pro tanto* of the lien created by this Act; but this section shall not apply to any payment made for the purpose of defeating or impairing a claim to a lien existing or arising under this Act. 38 V. c. 20, s. 5.

Enforcement  
of lien  
in Division  
and County  
Courts.

**12.** When the amount of the claims in respect of any lien is within the jurisdiction of the County or Division Courts respectively, proceedings to recover the same, according to the usual procedure of the said Court by judgment and execution, may be taken in the proper Division Court or in the County Court of the County in which the land charged is situate; or proceedings may be taken before the Judge of the said Courts, who may proceed in a summary manner by summons and order, and may take accounts and make requisite enquiries, and in default of payment may direct the sale of the estate and interest charged at such time as the same can be sold under execution, and such fur-

ther proceedings may be taken for the purpose aforesaid as the Judge thinks proper in his discretion.

2. Any conveyance under the seal of the County Court Judge shall be effectual to pass the estate or interest sold. Conveyance under seal of County Court Judge to be effectual to pass estate Fees.

3. The fees and costs in all proceedings taken under this section shall be such as are payable in respect of the like or similar matters according to the ordinary procedure of the said Courts respectively. 36 V. c. 27, s. 5; 38 V. c. 20, s. 10.

13. In other cases the lien may be realized in the Court of Chancery according to the ordinary procedure of that Court. Procedure in Chancery.  
36 V. c. 27, s. 6; 38 V. c. 20, s. 11.

14. The said Judge or Court, in his or its discretion, may also direct the sale of any machinery and authorize its removal. The Courts may order sale.  
36 V. c. 27, s. 7; 38 V. c. 20, s. 15.

15. Any number of lien-holders may join in one suit, and all suits brought by a lien-holder shall be taken to be brought on behalf of all the lien-holders of the same class; and in the event of the death of the plaintiff therein, or his refusal or neglect to proceed therewith, may, by leave of the Court in which the suit is brought, on such terms as may be deemed just and reasonable, be prosecuted and continued by any other lien-holder of the same class. 38 V. c. 20, s. 13. Suits by lien-holders.

16. In the event of the death of a lien-holder his right of lien shall pass to his personal representatives, and the right of a lien-holder may be assigned by any instrument in writing. Death of lien-holder.  
38 V. c. 20, s. 12.

17. Where there are several liens under this Act against the same property, each class of the lien-holders shall rank *pari passu* for their several amounts, and the proceeds at any sale shall be distributed amongst them *pro rata*, according to their several classes and rights, and they shall respectively be entitled to execution for any balance due to them respectively after said distribution. 36 V. c. 27, s. 12; 38 V. c. 20, s. 9. Several liens.

18. In case a claim is made by a sub-contractor in respect of a lien to which he is entitled, and a dispute arises as to the amount due or payable in respect thereof, the same shall be settled by arbitration. Disputed claims to be referred to arbitration.

2. One arbitrator shall be appointed by the person making the claim, one by the person by whom he was employed, and the third arbitrator shall be appointed by the two so chosen.

3. The decision of the arbitrators or a majority of them shall be final and conclusive. 38 V. c. 20, s. 6.



Refusal to appoint arbitrator.

**19.** In case either of the parties interested in any such dispute refuses or neglects within three days after notice in writing requiring him to do so, to appoint his arbitrator, or if the two arbitrators appointed fail to agree upon a third, the appointment may be made by a County Judge of the County in which the lands in respect of which the lien is claimed are situate. 38 V. c. 20, s. 7.

When unregistered lien shall cease.

**20.** Every lien which has not been duly registered under the provisions of sections four and five shall absolutely cease to exist after the expiration of thirty days after the work has been completed, or materials or machinery furnished, unless in the meantime proceedings are instituted to realize the claim under the provisions of this Act, and a certificate thereof, (which may be granted by the Judge or Court before whom or in which the proceedings are instituted,) is duly registered in the Registry Office of the County or other Registration Division wherein the lands in respect of which the lien is claimed are situate. 38 V. c. 20, s. 14; 36 V. c. 27, s. 4.

When registered lien shall cease.

**21.** Every lien which has been duly registered under the provisions of sections four and five shall absolutely cease to exist after the expiration of ninety days after the work has been completed, or materials or machinery furnished, or the expiry of the period of credit, unless in the meantime proceedings are instituted to realize the claim under the provisions of this Act, and a certificate thereof, (which may be granted by the Judge or Court before whom or in which the proceedings are instituted,) is duly registered in the Registry Office of the County or other Registration Division wherein the lands in respect of which the lien is claimed are situate. 36 V. c. 27, s. 4.

Property affected by the lien not to be removed.

**22.** During the continuance of any lien, no portion of the property affected thereby, or the machinery therein, shall be removed to the prejudice of such lien; and any attempt at such removal may be restrained by application to the County Court or the Judge thereof, or the Court of Chancery respectively, according as the claim is under or over the sum of two hundred dollars. 36 V. c. 27, s. 8; 38 V. c. 20, s. 16.

Security may be given in lieu of lien.

**23.** Upon application to the County Court or the Judge thereof in claims under two hundred dollars, and to the Court of Chancery in other cases, such Judge or Court may receive security or payment into Court in lieu of the amount of such claim, and may thereupon vacate the registry of such lien, or may annul the said registry upon any other ground. 36 V. c. 27, s. 9; 38 V. c. 20, s. 17.

Wrongful claim or refusal to discharge, costs.

**24.** In any of the said cases, the Court or Judge may proceed to hear and determine the matter of the said lien, and make such order as seems just, and in case the person claiming to be

entitled to such lien has wrongfully refused to sign a certificate of discharge thereof, or without just cause claims a larger sum to be due than is found by such Judge or Court, the Judge or Court may order and adjudge him to pay to the other party such costs as the Judge or Court may think fit to award. 36 V. c. 27, s. 9; 38 V. c. 20, s. 17.

**25.** Wherever any mechanic, artisan, machinist, builder, miner, contractor, or other person, has furnished or procured any materials for use in the construction, alteration or repair of any building, erection or mine, at the request of and for some other person, such materials shall not be subject to execution, or other process, to enforce any debt, other than for the purchase thereof, due by the person furnishing or procuring such materials, and whether the same have or have not been in whole or in part, worked into, or made part of, such building or erection. 36 V. c. 27, s. 13.

When materials used in the construction of buildings are not to be subject to execution.

**26.** Except so far as is herein otherwise provided, the provisions of "*The Registry Act*" shall not apply to any lien arising under the provisions of this Act. 38 V. c. 20, s. 18.

Application of Rev. Stat. c. 111.

## SCHEDULE.

(Section 4.)

### STATEMENT OF CLAIM.

*A. B.* of \_\_\_\_\_ under "*The Mechanics' Lien Act*," claims a lien upon the estate or interest of *C. D.* of \_\_\_\_\_, in respect of the following work (or materials), that is to say, \_\_\_\_\_, which work was (or is to be) done (or materials were furnished) for the said *C. D.* on or before the \_\_\_\_\_ day of \_\_\_\_\_;

The amount claimed as due, or to become due, is the sum of \_\_\_\_\_ dollars.

The description of the land to be charged is the following :

(Description of land.)

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18 \_\_\_\_.

36 V. c. 27, Sched.

## CHAPTER 121.

## An Act respecting Contracts in relation to Goods entrusted to Agents.

---

Interpretation, s. 1.	
“ Person.”	deemed pledge of goods represented by it, s. 7.
“ Goods.”	Antecedent debt owing from agent not to authorize lien, s. 8.
“ Shipped.”	Contracts with agents must be <i>bona fide</i> , s. 9.
“ Document of title.”	<i>Bona fide</i> loans, &c., validity of, ss. 10, 11.
Agents entrusted with goods to be deemed owners for certain purposes, s. 2.	Contracts with sub-agents when deemed made with agents, s. 12.
Agents in possession to be deemed entrusted, s. 3.	Payment, what to be deemed advances, s. 13.
Agents in possession of document of title deemed entrusted with the goods represented by it, s. 4.	Civil liability of agent, ss. 14, 15.
Contracts with agent for purchase when valid, s. 5.	Owners may redeem goods pledged by agents, s. 16.
Contracts with, for pledge, lien, &c., when valid, s. 6.	Remedy of owner against estate of bankrupt agent, s. 17.
Pledge of document of title to be	

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Interpretation clause.

**1.** In the construction of this Act,

“ Person.”

(1.) “ Person ” shall include a body corporate or company as well as an individual ;

“ Goods.”

(2.) “ Goods ” shall include all personal property of whatever nature or kind soever ;

“ Shipped.”

(3.) “ Shipped ” shall mean the carriage of goods, whether by land or by water ; C. S. C. c. 59, s. 22.

“ Documents of title.”

(4.) “ Document of title ” shall include every bill of lading, warehouse-keeper’s or wharfinger’s receipt or order for delivery of goods, every bill of inspection of pot or pearl ashes, and every other document used in the ordinary course of business, as proof of the possession or control of goods, or authorizing or purporting to authorize either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented. C. S. C. c. 59, s. 7.

**2.** Any agent entrusted with the possession of goods or of the documents of title thereto, shall be deemed the owner thereof for the following purposes, that is to say :

When agents to be deemed owner.

1. To make a sale or contract, as in the fifth section mentioned ;

And for what purposes.

2. To entitle the consignee of goods consigned by such agent to a lien thereon for any money or negotiable security advanced or given by him to or for the use of such agent, or received by the agent for the use of the consignee, in like manner as if such agent were the true owner of the goods ;

3. To give validity to any contract or agreement by way of pledge, lien or security *bona fide* made with such agent, as well for an original loan, advance or payment made upon the security for the goods or documents, as for any further or continuing advance in respect thereof ; and

4. To make such contract binding upon the owner of the goods and on all other persons interested therein, notwithstanding the person claiming such pledge or lien had notice that he was contracting only with an agent. C. S. C. c. 59, s. 2.

**3.** Every agent in possession of goods or documents of title as aforesaid shall, for the purposes of this Act, be taken to have been entrusted therewith by the owner, unless the contrary is shewn in evidence. C. S. C. c. 59, s. 13.

Agent in possession to be deemed entrusted.

**4.** Any agent entrusted as aforesaid and possessed of any document of title, whether derived immediately from the owner of the goods or obtained by reason of the agent having been entrusted with the possession of the goods or of any document of title thereto, shall be deemed to be entrusted with the possession of the goods represented by such document of title. C. S. C. c. 59, s. 8.

Agent possessed of document of title to be deemed entrusted with goods represented by it.

**5.** Any person may contract for the purchase of goods with any agent entrusted with the possession thereof, or to whom the same may be consigned, and may receive and pay for the same to such agent ; and such contract and payment shall be binding upon the owner of the goods notwithstanding the purchaser has notice that he is contracting only with an agent. C. S. C. c. 59, s. 1.

What contracts with agents to be valid.

**6.** In case any person has a valid lien and security on any goods or document of title or negotiable security in respect of a previous advance upon a contract with an agent—and in case he delivers up the same to such agent upon a contract for the

What contracts for lien valid.



pledge, lien or security of other goods or of another document or security by such agent delivered to him in exchange, to be held upon the same lien as the goods, document or security so delivered up—then such new contract, if *bona fide*, shall be deemed a valid contract made in consideration of a present advance of money within this Act, but the lien acquired under such new contract on the goods, document or security deposited in exchange shall not exceed the value of the goods, document or security so delivered up and exchanged. C. S. C. c. 59, s. 3.

Pledge of document of title to be deemed pledge of goods represented by it.

7. All contracts pledging or giving a lien upon any such document of title shall be deemed a pledge of and lien upon the goods to which it relates, and the agent shall be deemed the possessor of the goods or documents of title, whether the same are in his actual custody or are held by any other person for him or subject to his control. C. S. C. c. 59, s. 9.

Antecedent debt not to authorize lien.

8. No antecedent debt owing from any agent entrusted as aforesaid, shall authorize any lien or pledge in respect of such debt, nor shall it authorize such agent to deviate from any express orders or authority received from his principal. C. S. C. c. 59, s. 5.

Contracts must be *bona fide*.

9. Such contracts only shall be valid as are herein mentioned, and such loans, advances and exchanges only shall be valid as are made *bona fide* and without notice that the agent making the same has no authority so to do, or that he is acting *mala fide* against the owner of the goods. C. S. C. c. 59, s. 4.

*Bona fide* transactions with agents to bind owners.

10. All *bona fide* loans, advances and exchanges as aforesaid (though made with notice of the agent not being the owner, but without notice of his acting without authority), shall bind the owner and all other persons interested in the goods, document or security, as the case may be. C. S. C. c. 59, s. 6.

*Bona fide* loans or advances when deemed authorized.

11. Where any loan or advance is *bona fide* made to any agent entrusted with and in possession of goods or documents of title as aforesaid on the faith of any contract in writing to consign, deposit, transfer or deliver such goods or documents of title, and the same are actually received by the person making the loan or advance, either at the time of the contract or at a time subsequent thereto, without notice that the agent is not authorized to make the pledge or security, such loan or advance shall be deemed a loan or advance upon the security of the goods or documents of title within this Act. C. S. C. c. 59, s. 10.

What contracts to be

12. Every contract, whether made directly with the agent as aforesaid or with any clerk or other person on his behalf, shall

be deemed a contract with such agent. C. S. C. c. 59, s. 11. considered to be made with agent.

**13.** Every payment, whether made by money, bills of exchange or other negotiable security, shall be deemed an advance within this Act. C. S. C. c. 59, s. 12. Payments when deemed advances.

**14.** Nothing herein contained shall lessen, alter or affect the civil responsibility of any agent for the breach of any duty or contract or the non-fulfilment of his orders or authority, in respect of any such contract, agreement, lien or pledge as aforesaid. C. S. C. c. 59, s. 14. Other liability of agents not to be affected.

*[Sections 15-17 and 19, of C. S. C. c. 59, created criminal liabilities. See also 32-3 V. c. 21, ss. 79, 86, (D.)]*

**15.** The conviction of any agent as aforesaid, for a contravention of the Act of Canada respecting Larceny and other similar offences shall not be received in evidence in any action at Law or suit in Equity against him. C. S. C. c. 59, s. 18. Conviction not admissible in evidence. 32-3 V. c. 21, ss. 79 and 86.

**16.** Nothing herein contained shall prevent the owner from redeeming any goods or documents of title pledged as aforesaid, at any time before the same have been sold, upon repayment of the amount of the lien thereon or restoration of the securities in respect of which the lien exists, and upon payment or satisfaction to the agent of any sum of money for or in respect of which such agent is entitled to retain the goods or documents, by way of lien against such owner; or shall prevent the owner from recovering from the person with whom any goods or documents have been pledged, or who has any lien thereon, any balance or sum of money remaining in his hands as the produce of the sale of the goods, after deducting the amount of the lien under the contract. C. S. C. c. 59, s. 20. Owners may redeem goods pledged.

**17.** In case of the bankruptcy of any such agent, and in case the owner of the goods redeems the same, he shall, in respect of the sum paid by him on account of the agent for such redemption, be held to have paid the same for the use of such agent before his bankruptcy, or in case the goods have not been so redeemed, the owner shall be deemed a creditor of the agent for the value of the goods so pledged at the time of the pledge, and, and may in either case prove for or set-off the sum so paid, or the value of such goods, as the case may be. C. S. C. c. 59, s. 21. Remedy of the owner against the estate of agent bankrupt.

## CHAPTER 122.

## An Act respecting Limited Partnerships.

Limited partnerships may be formed, s. 1.	Certificates of renewal, s. 9.
General and Special partners, ss. 2-4.	Alterations, when deemed a dissolution, s. 10.
Certificate of partnership, Contents and form, ss. 5, 6.	Partnership name, s. 11.
To be filed in County Court, s. 7.	Liabilities of General and Special partners, ss. 12-17.
Partnership not formed until filed, s. 8.	No dissolution without notice, s. 18.
	Partnerships for doing business in both Ontario and Quebec, p. 1114.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

Limited partnerships may be formed.

**1.** Limited Partnerships for the transaction of any mercantile, mechanical or manufacturing business within the Province of Ontario, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter mentioned, but the provisions of this Act shall not be construed to authorize any such partnership for the purpose of banking or making insurance. C. S. C. c. 60, s. 1.

Of whom to consist.

**2.** Such Partnerships may consist of one or more persons, who shall be called General Partners, and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called Special Partners. C. S. C. c. 60, s. 2.

General and special partners.

**3.** General Partners shall be jointly and severally responsible as General Partners are by law, but Special Partners shall not be liable for the debts of the Partnership beyond the amounts by them contributed to the capital. C. S. C. c. 60, s. 3.

General partners only to transact business, &c.

**4.** The General Partners only shall be authorized to transact business and sign for the Partnership, and to bind the same. C. S. C. c. 60, s. 4.

Certificate to be signed.

**5.** The persons desirous of forming such Partnership shall make and severally sign a certificate which shall contain—

Contents of.

(1.) The name or firm under which the Partnership is to be conducted ;

(2.) The general nature of the business intended to be transacted;

(3.) The names of all the General and Special Partners interested therein, distinguishing which are General and which are Special Partners, and their usual places of residence;

(4.) The amount of capital stock which each Special Partner has contributed;

(5.) The period at which the Partnership is to commence, and the period at which it will terminate. C. S. C. c. 60, s. 5.

6. The certificate shall be in the words or to the effect of the Form of. form given in the Schedule to this Act, and shall be signed by the several persons forming such Partnership, before a Notary Public, who shall duly certify the same. C. S. C. c. 60, s. 6.

7. The certificate so signed and certified shall be filed in the Where to be office of the Clerk of the County Court of the County, in which filed. the principal place of business of the Partnership is situate, and shall be recorded by him at full length in a book to be for that purpose kept and open to public inspection. C. S. C. c. 60, s. 7.

8. No such Partnership shall be deemed to have been formed Partnership until a certificate has been made, certified, filed and recorded as not formed above directed; and if any false statement is made in such until filed. certificate, all the persons interested in the Partnership shall be liable for all the engagements thereof as General Partners. C. S. C. c. 60, s. 8.

9. Every renewal or continuance of a Partnership beyond the Certificates of time originally fixed for its duration, shall be certified, filed and continuance. recorded in the manner herein required for its original formation; and every Partnership otherwise renewed or continued, shall be deemed a General Partnership. C. S. C. c. 60, s. 9.

10. Every alteration made in the names of the Partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be What altera- deemed a dissolution of the Partnership, and every such Partnership tions to be in any manner carried on after any such alteration has been made, deemed a dis- shall be deemed a General Partnership, unless renewed as a Spe- solution. cial Partnership, according to the provisions of the next preceding section. C. S. C. c. 60, s. 10.

11. The business of the Partnership shall be conducted Partnership under a name or firm in which the names of the General Partners, name. or some or one of them, only shall be used; and if the name of any Special Partner is used in such firm with his privity, he shall be deemed a General Partner. C. S. C. c. 60, s. 11.



Liability of  
general part-  
ners to suits.

**12.** Suits in relation to the business of the Partnership may be brought and conducted by and against the General Partners in the same manner as if there were no Special Partner. C. S. C. c. 60, s. 12.

Restrictions  
upon stock of  
special part-  
ners.

**13.** No part of the sum which any Special Partner has contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the Partnership; but any Partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of the capital; and if after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profits. C. S. C. c. 60, s. 13.

When liable to  
refund.

**14.** If it appears that by the payment of interest or profits to any Special Partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the deficient capital, with interest. C. S. C. c. 60, s. 14.

Privileges of  
special part-  
ners.

**15.** A Special Partner may from time to time examine into the state and progress of the Partnership concerns, and may advise as to their management; but he shall not transact any business on account of the Partnership, nor be employed for that purpose as agent, attorney or otherwise; and if he interferes contrary to these provisions, he shall be deemed a General Partner. C. S. C. c. 60, s. 15.

General part-  
ners liable to  
account.

**16.** The General Partners shall be liable to account both in Law and Equity to each other and to the Special Partners for their management of the concern in like manner as other partners. C. S. C. c. 60, s. 16.

Other creditors  
preferred to  
special part-  
ners.

**17.** In case of the insolvency or bankruptcy of the Partnership, no Special Partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the Partnership have been satisfied. C. S. C. c. 60, s. 17.

No premature  
dissolution  
without no-  
tice, &c.

**18.** No dissolution of such Partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution has been filed in the office in which the original certificate was recorded, and has been published once in each week, for three weeks, in a newspaper published in the County or District where the Partnership has its principal place of business, and for the same time in the *Ontario Gazette*. C. S. C. c. 60, s. 18.

---

[Section 10, 22 of C. S. C. 60, to read:—

ships  
to Sep-  
1854,  
ed to  
busi-  
th L.  
C.

L. M.,  
Notary Public. } 18 V. c. 14, s. 2, and Schedule,  
and 12 V. c. 10, s. 5, No. 10.

20. Any Limited Partnership legally formed between the fifth day of September, one thousand eight hundred and fifty-four, and the day on which this Act takes effect, may transact business in either Upper Canada or in Lower Canada, or both, upon compliance with the formalities by this Act required, and on filing a certificate of the formation of the Partnership in the first form in this Act contained, in the office of the Clerk of the County Court of the County in Upper Canada, and in Lower Canada in the offices of the Prothonotary of the District and of the Registrar of the County, in which the principal place of business of the said Partnership is situate. 18 V. c. 14, s. 2.

21. The mere extension to Lower Canada of any existing Limited Partnership formed before the fifth day of September, one thousand eight hundred and fifty-four, shall not be deemed a dissolution of such Partnership. 18 V. c. 14, s. 3.

22. The Clerk of the County Court in Upper Canada and the Prothonotary and Registrar in Lower Canada, shall each receive for filing every such certificate, or certificate of extension, or of any renewal, and for recording the same, the sum of fifty cents. 12 V. c. 75., s. 18,—and 18 V. c. 14, s. 4.



## CHAPTER 123.

## An Act respecting the Registration of Co-partnerships and Business Firms.

Declarations of partnership to be filed, s. 1.	under a business name not their own, s. 9.
Form, s. 2.	Form, s. 10.
When to be filed, s. 3.	Penalty for not filing declarations, s. 11.
Where alteration in partnership, s. 4.	Time for filing declaration under former Acts extended, s. 12.
Allegations of declaration not controvertible by the signers, s. 5.	Registration of declarations, s. 13.
Signers to be partners until a new declaration filed, s. 6.	Firm Index Books, ss. 14, 15.
Declarations of dissolution, s. 7.	Individual Index Book, ss. 14, 16.
Actions against partners not filing declaration, s. 8.	Fees of Registrars, s. 17.
Declarations by individuals trading	Furnishing of Books, s. 18.
	Act not to apply to Cheese Cos., s. 19.
	Schedules, p. 1153.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. All persons associated in partnership for trading, manufacturing or mining purposes, shall cause to be delivered to the Registrar of the County or other Registration Division in which they carry or intend to carry on business, a declaration in writing, signed by the several members of such co-partnership.

Persons in partnership to deliver a declaration to the Registrar.

2. If however, any of the said members are absent from the place where they carry or intend to carry on business, at the time of making the declaration, then the declaration shall be signed by the members present in their own names, and also for their absent co-members, under their special authority to that effect, and such special authority shall be at the same time filed with the Registrar and annexed to the declaration. 33 V. c. 20, s. 1.

When some of the parties are absent.

3. The said declaration shall be in the form or to the effect of Schedule A to this Act, and shall contain the names, surnames, additions and residences of each and every partner as aforesaid, and the name, style or firm under which they carry on or intend to carry on such business, and shall state also the time during which the partnership has existed or is to exist, and

Requisites of declaration.



declare that the persons therein named are the only members of such co-partnership. 33 V. c. 20, ss. 2 & 5; 40 V. c. 7, *Sched. A.* (136).

**Time of filing declaration.** **3.** The said declaration shall be filed within six months next after the formation of such partnership. 33 V. c. 20, s. 3.

**Declaration where change in partnership.** **4.** A similar declaration shall in like manner be filed when and so often as any change or alteration takes place in the membership of such partnership, or in the name, style or firm under which they intend to carry on business, or in the place of residence of each member of said firm; and every new declaration shall state the alteration in the partnership. 33 V. c. 20, ss. 3 & 7.

**Allegations in the declaration not to be controvertible against certain parties.** **5.** The allegations made in the declarations aforesaid shall not be controvertible as against any party by any person who has signed the same, nor as against any party not being a member of the partnership by any person who has signed the same, or who was really a member of the partnership therein mentioned at the time such declarations were respectively made. 33 V. c. 20, s. 6.

**Persons signing declaration to be deemed partners till new declaration is filed.** **6.** Until a new declaration is made and filed by him, or by his co-partners or any of them as aforesaid, no such signer shall be deemed to have ceased to be a partner; but nothing herein contained shall exempt from liability any person who, being a partner, fails to declare the same as already provided, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment is recovered against them, any other partner or partners may be sued jointly or severally in an action on the original cause of action upon which such judgment was rendered; nor shall anything in this Act be construed to affect the rights of any partners with regard to each other, except that no such declaration as aforesaid shall be controverted by any signer thereof. 33 V. c. 20, s. 7.

**Liability of partners failing to declare the same.**

**Rights of partners between themselves.**

**Declaration of dissolutions of partnership may be registered.** **7.** Upon the dissolution of any partnership, any or all of the persons who composed such partnership may sign a declaration certifying the dissolution of the partnership: such declaration may be in the form of Schedule B to this Act. 36 V. c. 23, s. 4.

**How actions may be brought against partners in trade not filing declaration;** **8.** If any persons are associated as partners for the purpose of trade, and no declaration is filed under this Act with regard to such partnership, then any action which might be brought against all the members of the partnership may also be brought against any one or more of them, as carrying on or as having carried on business jointly with others, without naming such others in the writ or declaration under the name and style of their said co-partnership firm; and if judgment be recovered

against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment is rendered ;

2. If any such action be founded on any obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action ; and any judgment rendered against any member of such existing co-partnership for a partnership debt or liability, may be executed by process of execution against all and every the partnership stock, property, and effects, in the same manner, and to the same extent as if such judgment had been rendered against such co-partnership. 33 V. c. 20, s. 8.

when the action is founded on any obligation in writing.

9. Every person who is engaged in business for trading, manufacturing, or mining purposes, and who is not associated in partnership with any other person or persons, but who uses as his business style some name or designation other than his own name, or who in such style uses his own name with the addition of "*and Company*," or some other word or phrase indicating a plurality of members in the firm, shall cause to be delivered to the Registrar of the County or other Registration Division in which such person carries on or intends to carry on business, a declaration in writing, signed by such person. 35 V. c. 18, s. 1.

A person designating his business name as a firm to file a declaration.

10. Such declaration shall contain the name, surname, address, and residence of the person making the same, and the name, style or firm, under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership ; and such declaration shall be filed within six months of the time when such style is first used. 35 V. c. 18, s. 2.

Form of declaration.

Filing declaration.

11. Every member of any partnership who fails to comply with the requirements of this Act shall forfeit the sum of one hundred dollars, to be recovered before any Court of competent jurisdiction, by any person suing as well in his own behalf as on behalf of Her Majesty ; and half of such penalty shall belong to the Crown for the uses of the Province, and the other half to the party suing for the same, unless the suit is brought, as it may be, on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid. 33 V. c. 20, s. 4 ; 35 V. c. 18, s. 3 ; 40 V. c. 7, *Sched* (137).

Penalty for non-compliance.

Application of penalty.

12. The time for registering any declaration of partnership under the provisions of the "*Registration of Co-partnerships Act of 1869*," and of the Act passed in the thirty-fifth year of Her Majesty's reign, and chaptered eighteen, is extended to the first day of January, 1878, and no suit or action shall lie for the recovery of any penalty imposed by said Acts, or either of

Time for registering under 33 V. c. 20 and 35 V. c. 18, extended to 1st July, 1878.

them, either for failing to register such declaration as required by law, provided the same is registered on or before the said first day of January, 1878, or where the partnership ceased to exist before the second day of March, 1877, either by dissolution or otherwise; but this shall not apply to, or affect, any suit or action pending on the second day of March, 1877, or affect any cause in which the right of action for the penalty imposed by the said Acts was on said day barred under the provisions of the existing law; but any such suit or action pending on said day may be stayed by an order of a Judge on payment of the costs thereof, and where the partnership is existing at the date of such order, then on proof of the registration of such partnership. 40 V. c. 8, s. 73.

Registrar to  
record declar-  
ation.

**13.** It shall be the duty of the Registrar to enter all declarations made under this Act in the order in which the same are received in a book to be by him kept for that purpose, which shall at all times during office hours be open to the inspection of the public gratuitously; and for registering each such declaration the Registrar shall be entitled to receive from the person filing the same the sum of fifty cents if it does not contain more than two hundred words, and at the rate of ten cents per hundred words for all above the number of two hundred. 33 V. c. 20, s. 5; 36 V. c. 23, ss. 1, 3 & 4.

Registrar's  
fees.

Registrar to  
keep two in-  
dexes.

**14.** It shall be the duty of each Registrar to keep two alphabetical index books of all declarations delivered to him, in pursuance of the provisions of this Act. 35 V. c. 18, s. 4.

Form of "Firm  
Index Book."

**15.** In one of such books, hereinafter called the "Firm Index Book," the Registrar shall enter in alphabetical order the style of the respective firms, in respect to which declarations have been delivered to him, and shall place opposite such entry the names of the person or persons composing such firm, and the date of the receipt by him of the declaration, in the manner shown in the form of "Firm Index Book," given in Schedule C. to this Act. 35 V. c. 18, ss. 5 & 7; 36 V. c. 23, s. 4.

Form of "In-  
dividual In-  
dex Book."

**16.** In the second of such books, hereinafter called the "Individual Index Book," the Registrar shall enter in alphabetical order the names of the respective members of each of such firms, and shall place opposite such entry the style of the firm of which such person is a member, and the date of the receipt of the declaration, in the manner shown in the form of "Individual Index Book," given in Schedule D to this Act. 35 V. c. 18, s. 6.

Registrar's  
fees

**17.** The Registrar shall be entitled to charge for searches the following fees and no more:

For searching in Firm Index—each firm ten cents;  
For searching in Individual Index—each name ten cents;  
For each certificate, when required—twenty-five cents.

35 V. c. 18, s. 11.

**18.** All the books required for the purposes of this Act shall be furnished by the Treasurer of the Municipality, whose duty it is to furnish Registry Books (or in case of his default, by the Registrar), in the same manner as other Registry Books. 35 V. c. 18, ss. 9 & 8.

Who to furnish Registry Books.

**19.** This Act shall not be construed to apply to associations of individuals for the manufacture of cheese and contributing produce from their dairies for that purpose. 35 V. c. 18, s. 12.

Cheese Manufacturing Co.'s excepted.

SCHEDULE "A."

(Section 2.)

DECLARATION OF CO-PARTNERSHIP.

Province of Ontario, }  
County of }

We of in (occu-  
pation) and of in in  
(occupation), hereby certify

1. That we have carried on and intend to carry on trade and business as at in partnership, under the name and firm of . (Or, I (or we) the undersigned, of in , hereby certify that I (or we) have carried on and intend to carry on trade and business as at in partnership with C. D. of and E. F. of (as the case may be).

2. That the said partnership has subsisted since the day of one thousand eight hundred and ,

3. And that we, (or I (or we) and the said C. D. and E. F.) are and have been since the said day the only members of the said partnership.

Witness our hands at this day of one thousand eight hundred and 33 V. c. 20, Sched.

SCHEDULE "B."

Section 7.

DECLARATION OF DISSOLUTION OF PARTNERSHIP.

Province of Ontario, } I,  
County of } formerly a member of the firm carrying on business as  
at , in the County of , under the style of , do hereby certify that the said partnership was on the day of dissolved

Witness my hand, at the day of one thousand eight hundred and 33 V. c. 20, Sched.



## SCHEDULE "C."

(Section 15.)

## FIRM INDEX BOOK.

STYLE OF FIRM.	INAMES OF PERSONS COMPOSING THE FIRM.	DATE OF FILING DECLARATION.
Abbott, Black & Co.....	George Abbott, John Black, Edward Cook .....	10th February, 1871.
Black, Green & Jones.....	John Bernard, Edward Green, John Jones .....	12th February, 1871.
Bernard, Green & Co.....	Thomas Cook, James Wilson .....	14th February, 1871.
Cook (Thos.) & Co.....	William Dadson, Thomas Jones, William Wilberforce, James Johnson .....	14th February, 1871.
Dadson, William .....	Richard Dick .....	15th May, 1872.
Dick & Co. ....	William Dow .....	19th May, 1872.
Dow (Wm.) & Sons .....		

31 V. c. 18.

## SCHEDULE "D."

(Section 16.)

## INDIVIDUAL INDEX BOOK.

NAME OF INDIVIDUAL.	STYLE OF FIRM OF WHICH A MEMBER.	DATE OF FILING DECLARATION.
Abbott, George .....	Abbott, Black & Co. ....	10th February, 1871.
Black, John .....	Abbott, Black & Co. ....	10th February, 1871.
Bernard, John .....	Bernard, Green & Jones .....	12th February, 1871.
Cook, Edward .....	Abbott, Black & Co. ....	14th February, 1871.
Cook, Thomas .....	Thos. Cook & Co. ....	14th February, 1871.
Dadson, William .....	William Dadson .....	15th May, 1872.
Dick, Richard .....	Dick & Co. ....	19th May, 1872.
Dow, William .....	Wm. Dow & Sons .....	

35 V. c. 18.

## TITLE X.

LAWS AFFECTING SPECIAL CLASSES  
OF PERSONS.1. *Husband and Wife.*

- CHAP. 124.—Solemnization of Marriages, p. 1156.  
 “ 125.—Separate Rights of Property of Married Women, p. 1163.  
 “ 126.—Dower, p. 1168.  
 “ 127.—Conveyances by Married Women, p. 1172  
 “ 128.—Accidents, Compensation to Families of the killed, p. 1175.  
 “ 129.—Insurances for the benefit of Wives and Children, p. 1177.

2. *Parent and Child.*

- CHAP. 130.—Custody of Children, p. 1181.  
 “ 131.—Illegitimate Children, p. 1183.

3. *Guardian and Ward.*

- CHAP. 132.—Guardians, p. 1184.

4. *Master and Servant.*

- CHAP. 133.—Master and Servant, p. 1188.  
 “ 134.—Masters and Workmen, disputes, p. 1192.  
 “ 135.—Apprentices and Minors, p. 1198.

5. *Landlord and Tenant.*

- CHAP. 136.—Landlord and Tenant, p. 1204.  
 “ 137.—Overholding Tenants, &c., p. 1209.

6. *Profession of the Law.*

- CHAP. 138.—Law Society, p. 1214.  
 “ 139.—Barristers-at-Law, p. 1223.  
 “ 140.—Attorneys-at-Law, p. 1226.  
 “ 141.—Notaries Public, p. 1242.

7. *Medical Profession.*

- CHAP. 142.—Medicine and Surgery, p. 1243.  
 “ 143.—Anatomy, p. 1258.  
 “ 144.—Dentistry, p. 1261.  
 “ 145.—Pharmacy, p. 1266.

8. *Land Surveyors.*

- CHAP. 146.—Surveyors, p. 1274.

9. *Miscellaneous.*

- CHAP. 147.—Innkeepers, p. 1295.  
 “ 148.—Pawnbrokers, p. 1297.

## 1. *Husband and Wife.*

- CHAP. 124. Solemnization of Marriages, p. 1156.  
 “ 125. Separate Rights of Property of Married Women, p. 1163.  
 “ 126. Dower, p. 1168.  
 “ 127. Conveyances by Married Women, p. 1172.  
 “ 128. Accidents, Compensation to Families of the killed, p. 1175.  
 “ 129. Insurances for the benefit of Wives and Children p. 1177.

### CHAPTER 124.

#### An Act respecting the Solemnization of Marriages.

Ministers of all denominations may solemnize marriages, s. 1.	nor within particular hours, s. 15.
Marriages to be either by license or certificate, or by banns, s. 2.	Certificate of marriage to be given by minister if required, s. 16.
Issue of licenses and certificates, ss. 3-10.	Record to be kept by ministers of marriages solemnized by them, s. 17.
Affidavit required to obtain a license or certificate, s. 11.	Clerk of Peace to furnish the necessary books, s. 18.
License, &c., not to issue if Issuer has personal knowledge that affidavit is false, s. 12.	Books to be the property of the church to which the minister belongs, s. 19.
Persons whose consent to the marriage of a minor must be obtained, s. 13.	Quaker marriages, s. 20.
Fees of Issuers of Licenses, s. 14.	License to protect minister from damages if he is unaware of any impediment, s. 1.
Marriage need not be in a church	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Minister of any denomination may solemnize marriage.

1. The ministers and clergymen of every church and religious denomination duly ordained or appointed according to the rights and ceremonies of the churches or denominations to which they respectively belong, and resident in Ontario, may, by virtue of such ordination or appointment, and according to the rites and usages of such churches or denominations respectively, solemnize the ceremony of marriage between any two persons not under a legal disqualification to contract such marriage. C. S. U. C. c. 72, s. 1.

2. No minister or clergyman shall celebrate the ceremony of marriage between any two persons, unless duly authorized so to do by license under the hand and seal of the Lieutenant-Governor, or his Deputy duly authorized in that behalf, or by a certificate under this Act, or unless the intention of the two persons to intermarry has been proclaimed once, openly, and in an audible voice, either in the church, chapel or meeting-house in which one of the parties has been in the habit of attending worship, or in some church, chapel, meeting-house, or place of public worship of the congregation or religious community with which the minister or clergyman who performs the ceremony is connected, in the local municipality, parish, circuit or pastoral charge, where one of the parties has, for the space of fifteen days immediately preceding, had his or her usual place of abode; such proclamation to be on a Sunday, immediately before the service begins, or immediately after it ends, or at some intermediate part of the service. C. S. U. C. c. 72, s. 2; 37 V. c. 6, ss. 2 & 4, *last part*. See *Rev. Stat.* c. 13, s. 2.

No minister to solemnize marriage unless authorized by license or certificate or after publication of banns.

3. A certificate in the form given in Schedule A or Schedule B to this Act (according to the circumstances of the case) may at the option of the applicant, be substituted for a marriage license; and such certificate shall have the same legal effect as a license. 37 V. c. 6, s. 3; 39 V. c. 3, s. 2.

Certificate in stead of license.

4. Such licenses or certificates shall be issued from the office of the Provincial Secretary, and shall be furnished to persons requiring the same by such persons as the Lieutenant-Governor in Council may name for that purpose. 37 V. c. 6, s. 4.

Licenses and certificates to be issued by Prov. Sec.

5. Every license executed under the hand and seal of the Lieutenant-Governor, or his Deputy duly authorized in that behalf, and every certificate signed by the Provincial Secretary, or Assistant Provincial Secretary, for the purpose of solemnizing a marriage, shall be and remain valid, notwithstanding that the Lieutenant-Governor or Deputy, or Provincial Secretary, or Assistant Provincial Secretary has ceased to hold office before the time of the issue of the license or certificate. 38 V. c. 8, s. 1. See *Rev. Stat.* c. 13, s. 2.

Licenses signed by official persons valid notwithstanding their offices vacated

6. If any person issues any license or certificate for the solemnization of marriage without being authorized by the Lieutenant-Governor in Council in that behalf, unless under the authority in the next section contained, he shall forfeit to Her Majesty the sum of one hundred dollars for every license or certificate so issued. 38 V. c. 8, s. 2.

Unauthorized persons issuing licenses to be subject to a fine.

7. Any Issuer of marriage licenses or certificates may, with the approval in writing, of the Mayor or Reeve of the City, Town, Township or incorporated Village wherein he resides, from time to time, when prevented from acting by illness or unavoidable accident, or where his temporary absence is contemplated, appoint, by writing under his hand, a Deputy to act for him.

Deputy-issuers may be appointed.



Powers.

2. The said Deputy shall, while so acting at the residence or office or place of business of the said Issuer for whom the Deputy acts, possess the powers and privileges (as to administering necessary oaths and otherwise) of the Issuer appointing him.

Appointment  
of Deputy to  
be certified to  
Prov. Sec.

3. The Issuer shall, upon appointing a Deputy, forthwith transmit to the Provincial Secretary a notice of the appointment, and of the cause thereof, and of the name and official position of the person by whom the appointment has been approved, and the Lieutenant-Governor may at any time annul the appointment. 38 V. c. 8. s. 3.

Where no  
Mayor, etc.

4. In case it is necessary on account of illness, unavoidable accident, or contemplated temporary absence of any Issuer of marriage licenses, to appoint a Deputy, and there is no Mayor or Reeve to give the consent required by the provisions of sub-section one of this section, such Issuer of marriage licenses may, in the manner in other respects required by said sub-section, but without such consent, appoint such Deputy; and the licenses or certificates issued by such Deputy shall be deemed to authorize the solemnization of marriages at the same places as licenses or certificates issued by the principal for whom such Deputy acts; and no irregularity in the appointment of a Deputy Issuer shall affect the validity of a license or certificate by him issued. 39 V. c. 3, s. 4.

How Deputies  
to sign  
licenses.

8. Every Deputy so appointed shall sign each license and certificate issued by him, with the name of his principal as well as his own name, in the following manner—"A. B., Issuer of Marriage Licenses, per C. D., Deputy Issuer," or to the like effect; but no irregularity in the issue of a license or certificate issued by an Issuer or Deputy Issuer to any person or persons obtaining the same, or acting thereon in good faith, shall invalidate a marriage solemnized in pursuance thereof. 38 V. c. 8, s. 4.

Unissued  
licenses to be  
returned when  
required.

9. Every Issuer of licenses or certificates aforesaid, or any other person having unissued licenses or certificates in his possession, power, custody or control, shall whenever required so to do, transmit to the Provincial Secretary every such license or certificate; and the property in all unissued licenses and certificates shall be and remain in Her Majesty. 38 V. c. 8, s. 5.

Expense of  
providing  
licenses.

10. All expenses incident to providing licenses and certificates, shall be paid by the Issuer of the licenses and certificates. 37 V. c. 6, s. 9.

Affidavit of  
party before  
license or  
certificate is  
granted.

11. Before any license or certificate is granted by any Issuer or Deputy Issuer, one of the parties to the intended marriage shall personally make an affidavit which shall state

(a) In what County or District it is intended that the marriage

shall be solemnized, and in what Town, Village or place in the County or District, and

(b) That he or she believes that there is no affinity, consanguinity, precontract, or other lawful cause, or legal impediment, to bar or hinder the solemnization of the marriage ;

(c) That one of the parties has for a space of fifteen days immediately preceding the issue of the license or certificate had his or her usual place of abode within the County or judicial district, in which (for either municipal or judicial purposes) the local Municipality in which the marriage is to be solemnized lies;

Or (if the County or District in which it is intended that the marriage shall be solemnized is not that in which either of the parties has, for a space of fifteen days immediately preceding the issue of the license or certificate, had his or her usual place of abode,) that the reason of procuring the marriage to be solemnized in such place is not in order to evade due publicity or for any other improper purpose.

2. In case either of the parties, not being a widower or widow, is under the age of twenty-one years, the affidavit shall further state that the consent of the person whose consent to the marriage is required by law has been obtained thereto.

3. If there is no person having authority to give such consent, then, upon oath made to that effect by the party requiring the license or certificate, it shall be lawful to grant the license or certificate notwithstanding the want of any such consent.

4. The affidavit may be in the form set forth in Schedule C to this Act, and may be made before the Issuer of Licenses or his Deputy. 37 V. c. 6, s. 5 ; 39 V. c. 3, s. 1, *first part*.

12. In case the person having authority to issue the license or certificate has personal knowledge that the facts are not as the eleventh section of this Act requires, he shall not issue the license or certificate; and if he has any reason to believe or suspect that the facts are not as aforesaid, he shall, before issuing the license or certificate, require further evidence to his satisfaction in addition to the said affidavit or deposition. 37 V. c. 6, s. 7 ; 39 V. c. 3, s. 1, *last part*.

Issuer having personal knowledge or reason to suspect that affidavit is untrue.

13. The father, if living, of any party under twenty-one years of age, not being a widower or widow, or if the father is dead the guardian or guardians of the person of the party so under age, lawfully appointed, or one of the guardians, if there are more than one; or in case there is no such guardian, then the mother of the minor, if the mother is unmarried, shall have authority to give consent to the marriage. 37 V. c. 6, s. 6.

Persons whose consent to marriage of a minor is to be obtained.

14. No fee shall be payable for any license or certificate, except the sum of two dollars, which the Issuer of the license or

Fees.

certificate shall be entitled to retain for his own use; but the Lieutenant-Governor in Council may from time to time reduce, the sum so payable. 37 V. c. 6, s. 8.

No valid objection that it was not in a church or chapel, &c.

**15.** It shall not be a valid objection to the legality of a marriage that the same was not solemnized in a consecrated church or chapel, or within any particular hours. C. S. U. C. c. 72, s. 3.

Ministers marrying must give certificate if required.

**16.** Every clergyman or minister, who celebrates a marriage, shall, if required at the time of the marriage by either of the parties thereto, give a certificate of the marriage under his hand, specifying the names of the persons married, the time of the marriage, and the names of two or more persons who witnessed it, and specifying also whether the marriage was solemnized pursuant to license or certificate under this Act, or after publication of banns; and the clergyman or minister may demand twenty-five cents for the certificate given by him from the person requiring it. C. S. U. C. c. 72, s. 4.

Fee for certificate.

Ministers to enter marriages in a book, &c. Form of record.

Rev. Stat. c. 36.

**17.** Every clergyman or minister shall, immediately after he has solemnized a marriage, enter in a book, to be kept by him for the purpose, a true record of the marriage; which record shall specify all the particulars, given in Schedule B to *The Act respecting the Registration of Births, Marriages and Deaths*. C. S. U. C. c. 72, ss. 5, 6.

Clerks of the Peace to furnish books and printed forms at the expense of the County.

**18.** The Clerk of the Peace of every County shall, at the expense of the County, from time to time on demand, furnish all clergymen or ministers with the books to be kept; and such books shall have columns and headings printed on every page according to the form of said Schedule B; and the books shall be of such size and form as to admit of the necessary entries being conveniently made therein. C. S. U. C. c. 72, s. 13.

Said books, &c., to be property of the church to which clergyman belongs.

**19.** The book by whomsoever furnished shall be the property of the church or denomination to which the clergyman or minister, clerk or secretary belongs at the time of the first marriage which he records therein. C. S. U. C. c. 72, s. 14.

Quakers' marriages declared valid.

Rev. Stat. c. 36.

**20.** Every marriage duly solemnized between members of the Religious Society of Friends, commonly called Quakers, according to the rights and usages thereof, shall be valid; and all the duties imposed by this Act, or by *The Act respecting the Registration of Births, Marriages, and Deaths*, upon a minister and clergyman, shall, with regard to such marriage, be performed by the clerk or secretary of the Society, or of the meeting at which the marriage is solemnized. C. S. U. C. c. 72, s. 11.

License to protect minister from damages where he is un-

**21.** No minister who performs any marriage ceremony after banns published, or after a license or a certificate under this Act issued, shall be subject to any action or liability for damages

or otherwise by reason of there having been any legal impediment to the marriage, unless, at the time when he performed the ceremony, he was aware of the impediment. 37 V. c. 6, s. 10.

aware of the  
impediment.

## SCHEDULE "A."

(Section 3.)

FORM OF CERTIFICATE BEFORE MARRIAGE WITHOUT BANNS, WHERE ONE OF THE PARTIES HAS RESIDED FOR FIFTEEN DAYS NEXT PRECEDING THE ISSUE OF THE CERTIFICATE IN THE COUNTY.

THESE are to certify that *A. B.* of \_\_\_\_\_ and *C. D.* of \_\_\_\_\_ being minded, as it is said, to enter into the contract of marriage, and being desirous of having the same duly solemnized, the said *A. B.* (or *C. D.*) has made oath, as required by law, that he (or she) believes that there is no affinity, consanguinity, precontract, or any other lawful cause or legal impediment to bar or hinder the solemnization of the said marriage, and that said *A. B.* or *C. D.* (or both, as the case may be), has (or have) had his (or her, or their) usual place of abode, for the space of fifteen days last past, within the City (County or District) of \_\_\_\_\_ namely, in the Township (Town or Village) of \_\_\_\_\_ in the said County (or District) of \_\_\_\_\_

and that the said *A. B.* and *C. D.* are of the full age of twenty-one years. [Or that *A. B.* or *C. D.* is a widower or widow; or is under the age of twenty-one years, and that the consent of *E. F.*, whose consent to said marriage is required by law, has been obtained; or that the father of the said (party under age) is dead, no guardian of the person of said (party) has been appointed, and the mother of said (party) is dead (or married), and there is no person having authority to give consent to said marriage (as the case may be).]

And these are therefore to certify that the requirements of *The Act respecting the Solemnization of Marriages* have been complied with.

Given under my hand and seal at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_ and in the \_\_\_\_\_ year of Her Majesty's reign.

*G. H.,*  
Issuer (or Deputy Issuer) of Licences.

Issued from the office of the Provincial }  
Secretary for Province of Ontario, }  
this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ }  
K. L.,  
Provincial Secretary.

## SCHEDULE "B."

(Section 3.)

FORM OF CERTIFICATE FOR A MARRIAGE WITHOUT BANNS WHERE NEITHER OF THE PARTIES HAS RESIDED FOR FIFTEEN DAYS NEXT PRECEDING IN THE COUNTY.

THESE are to certify that *A. B.* of \_\_\_\_\_ and *C. D.* of \_\_\_\_\_ being minded, as it is said, to enter into the contract of marriage, and being desirous of having the same duly solemnized, the said *A. B.* (or *C. D.*) has made oath that he (or she) believes



that there is no affinity, consanguinity, precontract, or any other lawful cause or legal impediment to bar or hinder the solemnization of the said marriage, and having also otherwise made oath as required by law. These are therefore to certify that the requirements of *The Act respecting the Solemnization of Marriages* have been complied with.

Given under my hand and seal at this  
day of \_\_\_\_\_ in the year of our Lord one thousand eight  
hundred and \_\_\_\_\_ and in the \_\_\_\_\_ year of Her  
Majesty's reign.

G. H.,  
Issuer (or Deputy Issuer) of Licenses.

Issued from the office of the Provincial }  
Secretary for the Province of Ontario, }  
this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ }

K. L.,  
Provincial Secretary.

## SCHEDULE "C."

(Section 11.)

### FORM OF AFFIDAVIT.

I, A. B. (or C. D.) of \_\_\_\_\_ { Bachelor (or widower),  
make oath and say as follows : { Spinster (or widow),

1. I, and C. D. of \_\_\_\_\_ { Spinster (or widow),  
\_\_\_\_\_ { Bachelor (or widower),

are desirous of entering into the contract of marriage, and of having our marriage duly solemnized at the Town (or Village, &c.) of \_\_\_\_\_ in the County (or District) of \_\_\_\_\_

2. According to the best of my knowledge and belief, there is no affinity, consanguinity, precontract, or any other lawful cause or legal impediment to bar or hinder the solemnization of the said marriage.

[3. I, or the said C. D. (or both, as the case may be) have (or has) had since the \_\_\_\_\_ day of \_\_\_\_\_ my (or his, or her, or our) usual place of abode within the Municipality of \_\_\_\_\_ in the said County (or District). (Or if neither of the parties has, for the space of fifteen days immediately preceding the issue of the certificate or license, had his or her usual place of abode in the County or District in which it is intended that the marriage shall be solemnized ; The reason of procuring the marriage to be solemnized in \_\_\_\_\_ is not in order to evade due publicity, or for any other improper purpose.)]

4. I am of the age of \_\_\_\_\_ years, and the said C. D. is of the age of \_\_\_\_\_ years.

5. (In case of one or both of the parties being under the age of twenty-one years) I am a { widower } or the said C. D. (or A. B.) is a { widow  
widow } widower

[Or E. F. of \_\_\_\_\_ is the person whose consent to said marriage is required by law, and the said E. F. consents to the said marriage.]

[Or The father of the said (party under age) is dead, no guardian of the person of the said (party under age) has been appointed, and the mother of the said (party under age) is dead (or married), and there is no person having authority to give consent to said marriage (as the case may be).]

Sworn before me, at \_\_\_\_\_ (Signed) A. B.  
in the \_\_\_\_\_ of \_\_\_\_\_ or C. D.  
this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ }

G. H.,  
(Issuer of Licenses, or  
Deputy Issuer of Licenses.)

## CHAPTER 125.

## An Act respecting certain Separate Rights of Property of Married Women.

---

Short title, s. 1.	marriage, ss. 15-17.
Women married before 4th May, 1859, s. 2.	Liability for debts on wife's separate contracts, ss. 18, 19.
Women married since 4th May, 1859, ss. 3-5.	Suits by and against married women, s. 20.
Real property, ss. 3, 4.	Rights of married women :—
Personal property, s. 5.	To insure their own or their husband's lives, s. 21.
Act not to prevent seizure in execution for tort of a married woman, s. 6.	To hold stock, s. 22.
Personal earnings of married women protected, s. 7.	To deposit in a bank, s. 23.
Order for protection of earnings of minor children of a married woman, ss. 8-14.	Deposits in fraud of creditors, s. 24.
Liability for wife's debts before	Distribution of personal property of a wife dying intestate, s. 25.
	Act not to affect marriage settlements, s. 26.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

**1.** This Act may be cited as "*The Married Woman's Property Act*." Short title.

**2.** Every woman who, on or before the fourth day of May, one thousand eight hundred and fifty-nine, married without any marriage contract or settlement, shall and may, from and after the said day, notwithstanding her coverture, have, hold and enjoy all her real estate not on or before the said fourth day of May taken possession of by her husband, by himself or his tenants, and all her personal property not on or before said day reduced into the possession of her husband, whether belonging to her before marriage or in any way acquired by her after marriage, free from his debts and obligations contracted after the said fourth day of May, and from his control or disposition without her consent, in as full and ample a manner as if she were sole and unmarried. C. S. U. C. c. 73, s. 2.

A woman married before 4th May, 1859, may hold property not then reduced to possession of her husband.

A woman married between 4th May, 1859, and 2nd Mar., 1872, may hold her real property free from the debts or control of her husband.

Proviso.

**3.** Every woman who married between the fifth day of May, one thousand eight hundred and fifty-nine, and the second day of March, one thousand eight hundred and seventy-two (both inclusive), without any marriage contract or settlement, shall and may, notwithstanding her coverture, have, hold and enjoy all her real property, whether belonging to her before marriage or acquired by her by inheritance, devise or gift, or as heir-at-law to an intestate, or in any other way after marriage, free from the debts and obligations of her husband, and free from his control or disposition, without her consent, in as full and ample a manner as if she continued sole and unmarried; but this section shall not extend to any property received by a married woman from her husband during coverture. C. S. U. C. c. 73, s. 1; 35 V. c. 16, s. 1.

A woman married after 2nd March, 1872, may hold any property free from any estate or claim of her husband during her life.

**4.** The real estate of any woman married after the second day of March, one thousand eight hundred and seventy-two, whether owned by her at the time of her marriage, or acquired in any manner during her coverture, and the rents, issues and profits thereof respectively, shall, without prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by her for her separate use, free from any estate therein of her husband during her lifetime, and from his debts and obligations, and from any claim or estate by him, as tenant by the curtesy; and her receipts alone shall be a discharge for any rents, issues and profits of the same; but nothing herein contained shall prejudice the right of the husband as tenant by the curtesy in any real estate of the wife which she has not disposed of *inter vivos*, or by will. 35 V. c. 16, s. 1; 40 V. c. 7, *Sched. A* (156).

A woman married since 4th May, 1859, may hold her personal property free from the debts or control of her husband.

Proviso.

**5.** Every woman who has married since the fourth day of May, one thousand eight hundred and fifty-nine, or who marries after the passing of this Act, without any marriage contract or settlement, shall and may, notwithstanding her coverture, have, hold and enjoy all her personal property, whether belonging to her before marriage or acquired by her by inheritance, bequest or gift, or as next of kin to an intestate, or in any other way after marriage, free from the debts and obligations of her husband, and free from his control or disposition, without her consent, in as full and ample a manner as if she continued sole and unmarried; but this clause shall not extend to any property received by a married woman from her husband during coverture. C. S. U. C. c. 73, s. 1.

This Act not to prevent seizure in execution in certain cases.

**6.** Nothing herein contained shall be construed to protect the property of a married woman from seizure and sale on any execution against her husband for her torts; and in such case, execution shall first be levied on her separate property. C. S. U. C. c. 73, s. 3.

**7.** All the wages and personal earnings of a married woman, and any acquisitions therefrom, and all proceeds or profits from any occupation or trade which she carries on separately from her husband, or derived from any literary, artistic or scientific skill, and all investments of such wages, earnings, moneys or property, shall, after the said second day of March, one thousand eight hundred and seventy-two, be free from the debts or dispositions of her husband, and shall be held and enjoyed by such married woman and disposed of without her husband's consent as fully as if she were a *feme sole*; and no order for protection shall hereafter be necessary in respect of any of such earnings or acquisitions; and the possession, whether actual or constructive of the husband, of any personal property of any married woman, shall not render the same liable for his debts. 35 V. c. 16, s. 2.

Personal earnings of married women protected.

**8.** Any married woman having a decree for alimony against her husband, or any married woman who lives apart from her husband, having been obliged to leave him for cruelty or other cause which by law justifies her leaving him and renders him liable for her support, or any married woman whose husband is a lunatic with or without lucid intervals, or any married woman whose husband is undergoing sentence of imprisonment in the Provincial Penitentiary or in any gaol for a criminal offence, or any married woman whose husband, from habitual drunkenness, profligacy or other cause, neglects or refuses to provide for her support and that of his family, or any married woman whose husband has never been in this Province, or any married woman who is deserted or abandoned by her husband, may obtain an order of protection entitling her, notwithstanding her coverture, to have and enjoy all the earnings of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband and from his control or dispositions, and without his consent, in as full and ample a manner as if she continued sole and unmarried. C. S. U. C. c. 73, s. 6.

In what cases a married woman may obtain an order of protection for the earnings of her minor children.

Purport and effect of such order.

**9.** The married woman may at any time apply, or the husband or any of the husband's creditors may at any time, on notice to the married woman, apply for the discharge of the order of protection; and if an order for such discharge is made, the same may be registered or filed like the original order. C. S. U. C. c. 73, s. 7.

How and by whom an order discharging protection may be obtained.

**10.** Either order may issue in duplicate, and where the married woman resides in a City or Town in which there is a Police Magistrate, the order for protection or any order discharging the same shall be made by the Police Magistrate, and shall be registered in the Registry Office of the Registration Division in which the City or Town is situate. C. S. U. C. c. 73, s. 8.

Either order may be in duplicate. By whom to be made in cities and towns.

Registration.

**11.** Where the married woman does not reside in a City or

By whom made when



not in such city or town.

Town in which there is a Police Magistrate, the order shall be made by the Judge or one of the Judges, or the acting or Deputy Judge of the Division Courts or a Division Court of the County in which the married woman resides; and instead of being registered, shall be filed for public inspection with the Clerk of the Division Court of the Division within which the married woman resides. C. S. U. C. c. 73, s. 9.

Hearing may be public or private.

**12.** The hearing of an application for an order of protection, or for an order discharging the same, may be public or private, at the discretion of the Judge or Police Magistrate. C. S. U. C. c. 73, s. 10.

Order not to have effect until registered.

**13.** The order for protection shall have no effect until it is registered or filed, and the Registrar or Clerk shall, immediately on receiving the order, endorse thereon the day of registering or filing the same; and a certificate of the registering or filing and date, signed by the Registrar or Clerk for the time being, shall be *prima facie* evidence of such registering or filing and date; and a copy of the order which is registered or filed, certified under the hand of the Registrar or Clerk to be a true copy thereof, shall be sufficient *prima facie* evidence of the order without proof of the signature of the Registrar or Clerk, and without further proof of the order itself, or of the making or validity thereof. C. S. U. C. c. 73, s. 11.

Evidence of order, etc.

From what time the order discharging protection shall take effect.

**14.** The order for discharging an order of protection shall not in any case be retroactive, but shall take effect from the time it is made, and the order for protection shall protect the earnings of the minor children of the married woman until an order is made discharging such order of protection, and the married woman shall continue to hold and enjoy to her separate use whatever, during the interval between the registering or filing of the order of protection and the making of the order discharging the same, she may have acquired by the earnings of her minor children. C. S. U. C. c. 73, s. 12.

Separate property of wife to be liable for her debts before marriage.

**15.** Every married woman having separate property, whether real or personal, not settled by any ante-nuptial contract, shall be liable, upon any separate contract made or debt incurred by her before marriage, (such marriage being since the said fourth day of May, one thousand eight hundred and fifty-nine, or after this Act takes effect,) to the extent and value of such separate property, in the same manner as if she were sole and unmarried. C. S. U. C. c. 73, s. 14.

Liability of husband for debts of wife before marriage where he takes an interest under a marriage settlement.

**16.** Every husband who, since the fourth day of May, one thousand eight hundred and fifty-nine, or hereafter, takes any interest in the separate, real or personal property of his wife, under any contract or settlement on marriage, shall be liable, upon the contracts made or debts incurred by her before marriage, to the extent or value of such interest only, and no more. C. S. U. C. c. 73, s. 15.

**17.** A husband shall not, by reason of any marriage solemnized after the second day of March, one thousand eight hundred and seventy-two, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued therefor, and any property belonging to her shall be liable to satisfy such debts, as if she had continued unmarried. 35 V. c. 16, s. 8.

Non-liability of husband for debts of the wife before marriage.

**18.** A husband shall not be liable for any debts of his wife in respect of any employment or business in which she is engaged on her own behalf, or in respect of any of her own contracts. 35 V. c. 16, s. 8.

Non liability for her debts in separate contracts.

**19.** Any married woman shall be liable on any contract made by her respecting her real estate, as if she were a *feme sole*. 40 V. c. 7, *Sched. A* (156).

Liability of married woman on contracts respecting her real estate.

**20.** A married woman may maintain an action in her own name for the recovery of any wages, earnings, money and property, by this or any other Act declared to be her separate property, and shall have in her own name the same remedies, against all persons whomsoever for the protection and security of such wages, earnings, money, and property, and of any chattels or other her separate property for her own use, as if such wages, earnings, money, chattels and property belonged to her as an unmarried woman; and any married woman may be sued or proceeded against separately from her husband in respect of any of her separate debts, engagements, contracts or torts, as if she were unmarried. 35 V. c. 16, s. 9.

Suits by and against married women.

**21.** A married woman, in her own name, or that of a trustee for her, may insure for her sole benefit, or for the use or benefit of her children, her own life, or, with his consent, the life of her husband, for any definite period, or for the term of her or his natural life; and the amount payable under said insurance shall be receivable for the sole and separate use of such married woman or her children, as the case may be, free from the claims of the representatives of her husband, or of any of his creditors. 35 V. c. 16, s. 3.

Married women may insure their own or husbands' lives.

**22.** Any married woman may become a stockholder or member of any bank, insurance company, or any other incorporated company or association, as fully and effectually as if she were a *feme sole*, and may vote by proxy or otherwise, and enjoy the like rights as other stockholders or members. 35 V. c. 16, s. 5.

Married women may hold stocks, etc., and vote.

**23.** A married woman may make deposits of money in her own name in any savings or other bank and withdraw the same by her own cheque; and any receipt or acquittance of such depositor shall be a sufficient legal discharge to any such bank. 35 V. c. 16, s. 6.

May deposit in bank and cheque out.

Rights of husband's creditors to deposits.

**24.** Nothing hereinbefore contained in reference to moneys deposited, or investments by any married woman, shall, as against creditors of the husband give validity to any deposit or investment of moneys of the husband made in fraud of such creditors, and any money so deposited or invested may be followed as if this Act had not been passed. 35 V. c. 16, s. 7.

Separate personal property of wife dying intestate, how to be distributed.

**25.** The separate personal property of a married woman dying intestate shall be distributed in the same proportions between her husband and her children as the personal property of a husband dying intestate is to be distributed between his wife and children; and if there be no child or children living at the death of the wife so dying intestate, then such property shall pass or be distributed as if this Act had not been passed. C. S. U. C. c. 73, s. 17.

Act not to affect marriage settlements, etc.

**26.** Nothing in this Act contained shall be construed to prevent any ante-nuptial settlement or contract being made in the same manner and with the same effect as such contract or settlement might be made if this Act had not been passed; but notwithstanding any such contract or settlement, any separate real or personal property of a married woman, acquired either before or after marriage, and not coming under or being affected by such contract or settlement, shall be subject to the provisions of this Act, in the same manner as if no such contract or settlement had been made; and as to such property, and her personal earnings and any acquisitions therefrom, such woman shall be considered as having married without any marriage contract or settlement. C. S. U. C. c. 73, s. 19.

As to property not coming within the contract.

## CHAPTER 126.

### An Act respecting Dower.

Dower out of equitable estates, s. 1.  
 Dower where husband had a right of entry, s. 2.  
 Dower not recoverable out of wild lands, s. 3.  
 Dower *ad ostium ecclesie* and *ex assensu patris* abolished, s. 4.  
 How dower may be barred—  
 1. By deed to which the husband is a party, s. 5.  
 2. By deed without the husband

where, under Rev. Stat. c. 127, his concurrence has been dispensed with, s. 6.  
 Power of attorney to bar dower, how to be executed, s. 7.  
 Ascertaining dower—  
 1. On sales where the wife is a lunatic, s. 8.  
 2. On certain other sales, ss. 9, 10.  
 Deeds barring dower before 2nd March, 1877, confirmed, s. 11.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

#### WIDOWS TO BE ENTITLED TO DOWER IN CERTAIN CASES.

1. Where a husband dies beneficially entitled to any land for an interest which does not entitle his widow to dower out of the same at Law, and such interest, whether wholly equitable or partly legal and partly equitable, is an estate of inheritance in possession, or equal to an estate of inheritance in possession, (other than an estate in joint tenancy), then his widow shall be entitled in Equity to dower out of the same land. C. S. U. C. c. 84, s. 1.

Dower out of equitable estates.

2. Where a husband has been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband did not recover possession thereof; but such dower shall be sued for or obtained within the period during which such right of entry or action might be enforced. C. S. U. C. c. 84, s. 2.

Dower where husband had a right of entry.

3. Dower shall not be recoverable out of any separate and distinct lot, tract or parcel of land, which, at the time of the alienation by the husband or at the time of his death, if he died seised thereof, was in a state of nature, and unimproved by clearing, fencing or otherwise for the purposes of cultivation or occupation; but this shall not restrict or diminish the right to have woodland assigned to the doweress under the thirty-fifth section of "*The Dower Procedure Act*," from which it shall be lawful for her to take firewood necessary for her own use, and timber for fencing the other portions of land assigned to her of the same lot, tract or parcel. 32 V. c. 7, s. 3.

Dower not recoverable out of land in state of nature when aliened.

Rev. Stat. c. 55, s. 35.

#### DOWER ABOLISHED IN CERTAIN CASES.

4. No widow shall be entitled to dower *ad ostium ecclesie*, or dower *ex assensu patris*. C. S. U. C. c. 84, s. 3.

Certain dower abolished.

#### HOW DOWER MAY BE BARRED.

5. A married woman may bar her dower in any lands or her inheritments by joining with her husband in a deed or conveyance thereof in which a release of dower is contained. C. S. U. C. c. 84, s. 4.

Dower may be barred by joint deed of husband and wife.

6. A married woman may also bar her dower by executing either alone or jointly with other persons a deed or conveyance to which her husband is not a party, containing a release of such dower; but no such deed or conveyance shall be effectual

Dower may be barred by separate deed of wife, made pursuant to



Rev. Stat.  
c. 127.

to bar her dower unless made in conformity with "*The Married Woman's Real Estate Act.*" 40 V. c. 7, *Sched. A.* (157 & 158). See C. S. U. C. c. 84, s. 5.

Powers of attorney to have dower executed by married women.

7. A power of attorney executed by a married woman authorizing the attorney to execute a deed barring or releasing her dower, shall be valid both at Law and in Equity, provided that the power of attorney is executed in conformity with said Act. 40 V. c. 7, *Sched. A.* (157 & 158); See 29 V. c. 28, s. 22, *part.*

#### ASCERTAINING VALUE OF DOWER.

##### *On sales where wife is a lunatic.*

Dower on conveyance where wife is a lunatic.

8. Where an owner of land whose wife is a lunatic, or of unsound mind, and confined as such in a Lunatic Asylum, is desirous of selling the land free from dower, he may apply in that behalf to the Judge of the County Court of the County in which he resides, or to a Judge of one of the Superior Courts, and if the Judge approves, he may, by an order to be made by him in a summary way, upon such evidence as to the Judge seems meet, and either *ex parte* or upon such notice as he may deem requisite, dispense with the concurrence of the wife for the purpose of barring her dower, and also he shall ascertain and state in the order the value of such dower, and order such amount to remain a charge upon the property, or to be secured otherwise for the wife's benefit, or to be paid and applied for her benefit as he deems best, and thereupon a conveyance by the husband, expressed to be free from his wife's dower, shall, subject to the terms and conditions mentioned in the order, be sufficient to bar her right thereto, as if she were of sound mind, and had duly executed a deed jointly with her husband for that purpose.

Dower to be ascertained and to be charge on land or secured for wife's benefit.

Fee to Judge.

2. On every such application the Judge shall be entitled to his own use to a fee of five dollars, and no other fee or charge of any kind shall be payable in respect thereof, either to the Clerk, or otherwise.

Rev. Stat.  
c. 127, ss. 6, 7,  
8 & 10, to  
apply.

3. Sections six, seven, eight and ten of "*The Married Woman's Real Estate Act.*" shall apply to the order to be made on the said application. 40 V. c. 8, s. 34 (1-3).

##### *On certain other sales.*

Similar application to ascertain dower in certain other cases.

9. The next preceding section shall apply to any case in which an agreement for sale has been made and a conveyance has been executed by the husband, and any part of the purchase money has been retained by the purchaser on account of

dower, and to any case in which an indemnity has been given against the dower of the wife. 40 V. c. 8, s. 34 (4).

10. Where the wife of an owner of land has been living apart from him for two years, under such circumstances as by law disentitle her to alimony, and such owner is desirous of selling the land free from dower, he may apply to a Judge of one of the Superior Courts, and, if the Judge approves, he may, by order to be made by him in a summary way, upon such evidence as to the Judge seems meet, and either *ex parte* or upon notice (to be served personally unless the Judge otherwise directs), dispense with the concurrence of the wife for the purpose of barring her dower, and thereupon a conveyance by the husband, expressed to be free from his wife's dower, shall, subject to any terms mentioned in the order, be sufficient to bar her right thereto, as if she had duly executed a deed jointly with her husband for that purpose.

Application in order to convey free from dower where wife disentitled by misconduct.

2. Sections six, seven, eight and ten of "*The Married Woman's Real Estate Act*," shall apply to the order to be made on the said application. 40 V. c. 8, s. 35.

Rev. Stat. c. 127, ss. 6, 7, 8 & 10 to apply.

#### DEEDS BARRING DOWER BEFORE 2ND MARCH, 1877, CONFIRMED.

11. Where a husband has before the second day of March, one thousand eight hundred and seventy-seven, duly conveyed land of which he was owner, any deed or conveyance executed before the said day by his wife for the purpose of barring her dower, to which deed or conveyance her husband is not a party, is and shall be taken and adjudged to be valid and effectual to have barred her dower in the lands in which such deed or conveyance professed to bar dower, notwithstanding the absence or want of a certificate touching her consent to be barred of her dower, and notwithstanding any irregularity, informality, or defect in the certificate (if any), and notwithstanding that such deed or conveyance may not have been executed, acknowledged or certified, as required by any Act on or before the said day in force, respecting the barring of dower. 40 V. c. 8, s. 36.

Deeds barring dower before 2nd March, 1877, confirmed.

## CHAPTER. 127.

## An Act to facilitate the conveyance of Real Estate by Married Women.

---

Short title, s. 1.	band's concurrence, ss. 5, 10.
Interpretation, s. 2.	Registration of order, ss. 7-8.
A Married woman may convey or bar dower :—	Fees on order, s. 9.
1. By deed to which her husband is a party, s. 3.	Filing of papers used on application for order, s. 11.
2. By deed, without her husband, under an order dispensing with his concurrence, s. 4.	Other powers of conveying not affected by this Act, s. 12.
Form of order dispensing with hus-	Defective conveyances validated, s. 13.
	Certain titles not prejudiced, s. 14.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.      **1.** This Act may be cited as "*The Married Woman's Real Estate Act.*"

Interpretation of.      **2.** In the construction of this Act

"Real estate."      (1.) "Real estate" shall extend to lands, chattels real, rents and hereditaments, whether corporeal or incorporeal, and to any undivided share thereof ; to any estate, right or interest therein, whether legal or equitable ; to any charge, lien or incumbrance in, upon, or affecting real estate, either at Law or in Equity ; to money subject to be invested in real estate ; and to any interest, charge, lien or incumbrance in, upon, or affecting such money as aforesaid.

"Judge."      (2.) "Judge" shall mean a Judge of one of the Superior Courts, a Judge of a County Court, or a Junior or Deputy Judge. 36 V. c. 18, s. 2.

A married woman, with her husband's concurrence, may convey real estate or any interest therein, and release and extinguish powers and appoint an attorney as a *feme sole*.      **3.** Every married woman, being of the full age of twenty-one years, may, by deed, convey her real estate, and convey, release, surrender, disclaim, or extinguish any interest therein, and may also, by deed, release or extinguish any power which may be vested in, or limited or reserved to her in regard to real estate ; and may also, by deed, bar her dower, and any right or inchoate right of dower in any real estate ; and may also, by deed, appoint an attorney or attorneys for the purposes aforesaid and every of them as fully and effectually as she could

do if she were a *feme sole*; but, except as hereinafter otherwise provided, no such conveyance, release, surrender, disclaimer, or extinguishment shall be valid or effectual unless the husband is a party to and executes the deed by which the same is effected; and, except as hereinafter otherwise provided, no such deed appointing an attorney shall be valid or effectual unless the husband is a party to and executes the same, or the deed executed in pursuance thereof. 36 V. c. 18, s. 3; C. S. U. C. c. 83, s. 41; 40 V. c. 7, *Sched. A* (157). See 29 V. c. 28, s. 22 *in part*.

4. Except in the case of a married woman, where, by law, the Court of Chancery, or any person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot or of unsound mind is or are the protector of a settlement in lieu of her husband) if a husband is, in consequence of being a lunatic, idiot, or of unsound mind and whether he has been found such by inquisition or not), or is, from any other cause, incapable of executing a deed, or if his residence is not known, or he is in prison, or is living apart from his wife by mutual consent, or if there is, in the opinion of the Judge, any other cause for so doing, a Judge may, by an order to be made by him, in a summary way, upon the application of the wife, upon such evidence as to him seems meet, and either *ex parte*, or upon such notice to the husband as he deems requisite, dispense with the concurrence of the husband in any case in which his concurrence is required by this Act or otherwise; and all acts, deeds, disclaimers, surrenders or powers of attorney done, executed or made by the wife, in pursuance of such order, in regard to her real estate shall be done, executed or made by her in the same manner as if she were a *feme sole*, and when so done, executed or made, by her shall be as good and valid as they would have been if the husband had become a party to and executed the same. 36 V. c. 18, s. 4; C. S. U. C. c. 83, s. 43.

Except where the Court of Chancery or other persons intrusted with lunatics are protector of a settlement in lieu of the husband, a judge may dispense with the concurrence of the husband in certain cases.

5. Such order may be in the form following, or to the like effect:—

Form of order.

“THE MARRIED WOMAN’S REAL ESTATE ACT.”

Upon application of *A B* of \_\_\_\_\_ the wife of *C D* (or formerly of, etc.) I, \_\_\_\_\_ one of the Judges of the Court of Queen’s Bench for Ontario (or as the case may be) do, pursuant to “*The Married Woman’s Real Estate Act*” order that the said *A B* may, in the same manner, and with the same effect, as if she were a *feme sole*, bargain, sell and convey, (or appoint an attorney or attorneys to bargain, sell and convey) all or any part of her estate, title and interest of, in, to or out of all and singular (describe the premises), [or bar her dower or right or inchoate right of dower, (or appoint an attorney to bar her dower or right or inchoate right of dower, as the case may be), in, to, or out of all and singular (describe the premises)].

Dated this \_\_\_\_\_ day of \_\_\_\_\_

A. D.

(Signature of Judge).

36 V. c. 18, s. 5; 40 V. c. 7, *Sched. A* (158).



Order may be registered.

**6.** Such order may be in duplicate or in as many parts as are necessary, and shall be signed by the Judge, and may be registered in the Registry office of the Registration Division wherein the lands to which the same relates are situate, upon its production and deposit, without any proof thereof; and such registration may take place either before or after the execution of the deed made in pursuance of such order. 36 V. c. 18, s. 6.

Order may be endorsed or written upon the deed.

**7.** Such order may, if desired, be endorsed or written upon the deed to which the same relates, in which case it shall be registered as part of the deed. 36 V. c. 18, s. 7.

The fee for registration of order.

**8.** For the registration of such order, including all necessary entries and certificates, the Registrar shall be entitled to a fee of one dollar, unless the order is endorsed or written upon the deed, in which case no fee shall be payable in respect of the registration thereof. 36 V. c. 18, s. 8.

Judge's fee for order.

No other fee or charge to be payable.

**9.** For every such order including every duplicate or other part thereof, the Judge shall be entitled to his own use to a fee of two dollars; but no other fee or charge of any kind shall be payable in respect thereof, either to the Clerk or otherwise. 36 V. c. 18, s. 9.

If order indorsed or written on deed how real estate may be described.

**10.** If such order is endorsed or written upon the deed to be made in pursuance thereof, the real estate to which the same relates may be described in the order by reference to the description contained in the deed. 36 V. c. 18, s. 10.

Filing of papers on application.

**11.** The affidavits and papers upon which the order is obtained shall be filed in the office of the Clerk of the Court of which the Judge granting the order is a Judge; and for filing said affidavits and papers the Clerk shall be entitled to the same fees as he is entitled to for filing papers in other cases. 40 V. c. 8, s. 33.

The powers of conveying given by this Act to a married woman not to interfere with any other power.

**12.** The powers of conveying given by this Act to a married woman shall not impair or affect any powers which independently of this Act, may either by statute, contract or settlement be vested in or limited or reserved to her so as to prevent her from exercising such powers in any case, except so far as by any conveyance made by her under this Act, she may be prevented from so doing in consequence of such powers having been suspended or extinguished by such conveyance. 36 V. c. 18, s. 11. C. S. U. C. c. 83, s. 42.

Defective conveyances to be valid.

**13.** Every conveyance before the twenty-ninth day of March, 1873, executed by a married woman of or affecting her real estate, in which her husband was a party, is, and shall be taken and adjudged to be valid and effectual to have passed the estate which such conveyance professed to pass of such married woman in the said real estate, notwithstanding the absence or

want of a certificate of her consent to convey the same ; and notwithstanding any irregularity, informality, or defect in the certificate (if any) ; and notwithstanding that such conveyance may not have been executed, acknowledged or certified as required by any Act at or before the said date in force respecting the conveyance of real estate by married women, or may not have been executed by the married woman in presence of her husband, or on the same day on which or at the same place at which such conveyance was executed by her husband. 36 V. c. 18, s. 12.

11. Nothing in this Act contained shall render valid any conveyance to the prejudice of any title, subsequently to the execution of such conveyance and before the said date acquired from the married woman by deed duly executed and certified as by law required, unless the actual possession or enjoyment of the real estate conveyed or intended to be conveyed by the prior conveyance has been had at any time subsequent thereto by the grantee therein, or those claiming by, from or under him, and he or they have been in such actual possession or enjoyment continuously for the period of three years before the said date, and he or they were at the said date in the actual possession or enjoyment thereof ; and nothing in this Act contained shall render valid any conveyance from the married woman which was not executed in good faith, or any conveyance of land of which the married woman or those claiming under her, is or are in the actual possession or enjoyment contrary to the terms of such conveyance. 36 V. c. 18, s. 13.

Certain titles  
not to be  
prejudiced.

## CHAPTER 128.

### An Act respecting Compensation to the Families of Persons killed by Accident, and in Duels.

Interpretation, s. 1.  
Action for damages on account of death, s. 2.  
To be brought by executor or administrator, s. 3.

Where death is a duel, action to be against seconds and abettors, s. 4.  
Actions to be brought within a year from the death, s. 5.  
Plaintiff to deliver particulars with the declaration, s. 6.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Interpretation  
of words.

**1.** The following words and expressions shall have in this Act the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter, that is to say :

“Parent.”

(1.) “Parent” shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and

“Child.”

(2.) “Child” shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter. C.S.C. c. 78, s. 6.

Action given  
to recover  
damage for the  
death of any  
person caused  
by any  
wrongful act,  
neglect, or  
default.

**2.** Wherever the death of a person has been caused by such wrongful act, neglect or default, as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, in such case the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death has been caused under such circumstances as amount in law to felony. C. S. C. c. 78, s. 1.

For whose  
benefit and in  
whose name  
such action  
shall be  
brought.

What damages  
may be given.

**3.** Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death has been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased, and in every such action the Judge or jury may give such damages as they think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action has been brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before mentioned parties in such shares as the Judge or jury by their verdict find and direct. C. S. C. c. 78, s. 2.

Action may  
be brought  
against  
principals,  
seconds and  
abettors in  
duels.

**4.** Where the death of a person has been caused by any wound or injury received in a duel, which wound or injury has been inflicted by the use of any description of fire-arms or other deadly weapon whatsoever, in such case the person inflicting such wound or injury, and all persons present aiding or abetting the parties in such duel as seconds or assistants therein, may be proceeded against under this Act, although no action for damages could have been brought by the person whose death was so caused had death not ensued from the infliction of such wound or injury. C. S. C. c. 78, s. 3.

One action  
only to lie for  
the same  
cause.  
Limitation  
thereof.

**5.** Not more than one action shall lie for and in respect of the same subject matter of complaint; and every such action shall be commenced within twelve months after the death of the deceased person. C. S. C. c. 78, s. 4.

Plaintiff to  
deliver  
particulars

**6.** In every such action the plaintiff on the record shall, together with the declaration, deliver to the defendant or his

attorney a full particular of the person for whom and on whose behalf such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered. C. S. C. c. 78, s. 5.

## CHAPTER 129.

An Act to secure to Wives and Children the benefit of Assurances on the Lives of their Husbands and Parents.

Persons may insure for benefit of their wives or children, s. 1.	Surrender of policy at any time for a paid-up policy, s. 12.
Apportionment may be charged, ss. 2, 3.	Power to borrow on the policy, s. 13.
Where no apportionment is made, shares to be equal, s. 4.	Death of some of beneficiaries, s. 14.
Mode of insurance, ss. 5, 6.	Application of bonuses and profits on policies, s. 15.
Insurances before 18th September, 1865, s. 7.	Insurance under this Act to be for separate use of wife, and free from creditors' claims, &c, s. 16.
Sum insured under this Act free from creditors' claims, s. 8.	Frauds on creditors, s. 17.
Payment of the money, ss. 9, 10.	Act not to affect existing rights, s. 18.
Investment of shares of minors, s. 11.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Any person may insure his life for the whole term thereof, or for any definite period, for the benefit of his wife or of his wife and children, or of his wife and some or one of his children, or of his children only or some or one of them, and may apportion the amount of the insurance money, as he may deem proper where the insurance is effected for the benefit of more than one. 29 V. c. 17, s. 1.

2. The insured may from time to time, by any further or other instrument in writing attached to or endorsed on the policy, alter the shares and allotments of the insurance money among the parties entitled to be benefited, as he may deem proper. 36 V. c. 19, s. 3, *last clause*.



Insured may on death of any beneficiary reallocate the share of deceased.

**3.** In the event of some of the persons for whose benefit an insurance under this Act has been effected, dying in the lifetime of the insured, the said insured, after the death of such person, by any instrument in writing attached to or endorsed upon the policy of insurance, may declare that the share formerly allotted to such person or persons shall be for the benefit of such other person or persons as the said insured may determine. 36 V. c. 19, s. 3, *first clause*.

Where no apportionment is made among the children.

**4.** Where no apportionment is made in any policy or declaration as aforesaid, all parties interested in the said insurance shall be held to share equally in the same; and where it is stated in such policy or declaration that the insurance is for the benefit of the wife and children generally, or of the children generally without specifying their names, then the word "children" shall be held to mean all the children of the person whose life is insured living at the time of his death, whether by any other marriage or not. 29 V. c. 17, s. 4.

How insurance may be effected, and premiums payable.

**5.** The said insurance may be effected either in the name of the person whose life is insured, or in the name of his wife, or of any other person (with the assent of such other person) as trustee; and the premium on any policy of insurance effected under this Act may be payable during the whole of the said person's life, or during any lesser period, by annual, half-yearly, quarterly or monthly payments; or the insurance may be effected by the payment of one sum as the premium for such insurance; and the policy of insurance may be for a limited term of years. 29 V. c. 17, s. 2; 36 V. c. 19, s. 1.

Certain policies made valid.

**6.** All such policies of insurance as were effected before the twenty-ninth day of March, 1873, by the payment of one sum as premium, or for a limited term of years, in pursuance of the Acts theretofore in force for the same purposes as this Act, are hereby made valid and effectual as if made in pursuance of and under this Act. 36 V. c. 19, s. 2.

Insurances effected before 18th September, 1865, may be endorsed in favour of wives or children.

**7.** It is hereby declared to have been lawful for any person, on or before the 18th day of September, 1866, to have endorsed upon or attached to any policy of insurance on his life which may have been effected and issued before the 18th day of September, 1865, a written declaration that such policy and insurance was for the benefit of his wife, or of his wife and children, or of his wife or some or one of his children, or of his children only, or of some or one of them, and to have apportioned the amount of the insurance money as he may have deemed proper where the insurance was declared to be for the benefit of more than one. 29 V. c. 17, s. 3.

Sum so insured not liable to creditors.

**8.** Upon the death of the person whose life is insured, the insurance money due upon the policy shall be payable according to the terms of the policy or of the declaration as aforesaid,

as the case may be, free from the claims of any creditor or creditors whomsoever, except as herein provided. 29 V. c. 17, s. 5.

**9.** In all cases where the party insured under any policy has heretofore directed, or hereafter directs, the insurance money, or any portion thereof, to be paid to his child or children, without naming any person to receive the same on his or their behalf during his or their minority, it shall be competent to the Assurance Company granting such policy to pay the amount due to such of the children as are minors into the hands of the executor or executors of such insured person, who shall hold the same as trustee or trustees for such children, and the receipt of such executor or executors shall be a sufficient discharge to the Company. 33 V. c. 21, s. 1.

Insurance moneys due to minors, may be paid to executors of the insured.

**10.** If the said insured has heretofore died or hereafter dies intestate, and without having appointed in writing any person to whom such payment may be made on behalf of such infants, the payment to a guardian of such infants, duly appointed by one of the Surrogate Courts of this Province, shall be a sufficient discharge to the Assurance Company for the money so paid, and the Company shall not be bound to see to the application of the money, or be liable for the subsequent misapplication thereof; but the guardian so appointed shall give security to the satisfaction of the Judge of such Court for the faithful performance of his duty as guardian, and the proper application of the moneys which he may receive. 33 V. c. 21, s. 2.

If an insured dies intestate, without appointing any one to receive the insurance moneys, they may be paid to a guardian for a minor.

Security by guardian.

**2.** Where the amount of the insurance money payable to a guardian of infants as aforesaid, does not exceed two hundred dollars, the fees payable on the appointment of such guardian shall be two dollars and no more, and such fees shall be regulated in the manner prescribed by the sixty-sixth section of "*The Surrogate Courts Act.*" 40 V. c. 7, *Sched. A* (159).

Fees where insurance not more than \$200.

Rev. Stat. c. 46, s. 66.

**11.** The trustee or trustees named in the last two preceding sections may invest the moneys so to be received upon Government securities or municipal debentures or on mortgage of real estate, with full power from time to time to alter, vary and transpose the same, and to apply all or any part of the annual income arising from the share or presumptive share of each of the children, of and in the said trust funds, in or towards his or her maintenance and education, in such manner as the trustee or trustees think fit, and also to advance unto and for each or any of the said children, notwithstanding his or her minority, the whole or any part of the presumptive share of the same child of and in the said trust moneys for the advancement or preferment in the world or in marriage of any such child. 33 V. c. 21, s. 3.

Powers as to insurance moneys due to minors.

Power to  
surrender  
policy.

**12.** If a person who has heretofore effected or hereafter effects an insurance in the terms of this Act, finds himself unable to continue to meet the premiums, he may surrender the policy to the Company granting the same, and accept in lieu thereof a paid-up policy for such sum as the premiums paid would represent, payable at death in the same manner as the original policy; and the said Company may accept such surrender, and grant such paid-up policy notwithstanding any such declaration, or direction in favour of the wife and children, or any or either of them, of the insured. 33 V. c. 21, s. 4.

Power to  
borrow on the  
policy.

**13.** The person insured may, from time to time borrow on the security of the policy such sums as may be necessary to keep the said policy in force, and the sums so borrowed shall be a first lien on the policy, notwithstanding any such direction in favour of the wife and children or any or either of them. 33 V. c. 21, s. 5.

Provision in  
case of death  
before the  
insured of any  
one benefici-  
ally entitled.

**14.** In the event of some of the parties for whose benefit the said insurance has been effected dying in the lifetime of the insured, the moneys payable thereunder shall be payable to the survivor or survivors of such parties, or in case they also die, to the executors or administrators of the assured, but nothing herein contained shall be held to prevent the said assured from assigning the policy for the benefit of any future wife or children, or executing a declaration in their favour or in favour of some or one of them as hereinbefore is mentioned. 33 V. c. 21, s. 6.

Insured may  
direct  
application of  
bonuses and  
profits.

**15.** Any person who effects any such policy of insurance under this Act, may in writing require the Assurance Company issuing such policy to apply the bonuses or profits accruing thereunder, or portions of the same, in reduction of the annual premiums payable by such insured in such way as he may direct; or he may require the said bonuses or profits to be added to the policy; and the said Assurance Company shall apply such bonuses or profits as such insured directs, and according to the rates established by such Company. 36 V. c. 19, s. 4; 33 V. c. 21, s. 7.

Insurance by  
husband for  
the benefit of  
wife and chil-  
dren to be  
separate use  
of wife, &c.

**16.** A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife, or of his wife and children or any of them, or upon which he has heretofore endorsed, or may hereafter endorse thereon that the same shall be for the benefit of his wife, or of his wife and children or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children or any of them, according to the intent so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or his creditors or form part of his estate, save and except for such amount as the same may be pledged to any person or persons prior to any endorsement thereon

for the benefit of his wife or children, or any of them, when the sum secured by the policy becomes payable; in the event of no executor or trustee having been appointed by the husband by will, a trustee thereof may be appointed by the Court of Chancery upon the application of the wife, or in the event of her death, by the children or their guardian, and the receipt of such executor or trustee shall be a good discharge to the office in which such insurance is effected. 35 V. c. 16, s. 4; 36 V. c. 19, s. 5.

Appointment by the Court of trustee, if no other trustee or executor appointed.

17. If it is proved that the policy of insurance was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid. 35 V. c. 16, s. 4.

Fraud in payment of premiums.

18. Nothing contained in this Act shall be held or construed to restrict or interfere with the right of any person to effect or assign a policy for the benefit of his wife or children in any other mode allowed by law. 29 V. c. 17, s. 6.

Act not to affect existing rights.

## 2. *Parent and Child.*

CHAP. 130. Custody of Children, p. 1181.

“ 131. Support of Illegitimate Children, p. 1183.

## CHAPTER 130.

### An Act respecting the Custody of Infants.

Superior Courts may permit access Attendance of witnesses, s. 2.  
by or give custody to mother, Enforcement of order, s. 3.  
and make order for maintenance, Case of mother guilty of adultery,  
ance, s. 1. s. 4.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Any of the Superior Courts of Law or Equity, or any Court or Judge of any such Courts, upon hearing the petition of Judge may make order for



allowing the mother access to any infant in the sole custody of the father or other person, or for its delivery if under 12 years, and also order for its maintenance.

the mother of any infant, being in the sole custody or control of the father thereof, or of any person by his authority, or of any guardian after the death of the father; may, if such Court or Judge sees fit, make order for the access of the petitioner to such infant, at such times and subject to such regulations as such Court or Judge thinks convenient and just, and if such infant is within the age of twelve years, may make order for the delivery of such infant to the petitioner, to remain in the care and custody of the petitioner until such infant attains the age of twelve years, subject to such regulations as such Court or Judge may direct; and such Court or Judge may also make order for the maintenance of such infant by payment by the father thereof, or by payment out of any estate to which such infant may be entitled, of such sum or sums of money from time to time, as, according to the pecuniary circumstances of such father or the value of such estate, such Court or Judge thinks just and reasonable. C. S. U. C. c. 74, s. 8.

Court or Judge in any such case may compel the attendance of witnesses.

**2.** The Court or Judge as aforesaid may enforce the attendance of any person before such Court or Judge, to testify on oath respecting the matter of such petition, by order or rule made for that purpose, and on the service of a copy thereof and the payment of expenses as a witness, in the same manner as in a suit or action in the said Courts respectively, or may receive affidavits respecting the matters in such petition. C. S. U. C. c. 74, s. 9.

Orders enforceable by process of contempt.

**3.** All orders made by the Court or a Judge by virtue of this Act, shall be enforceable by process of contempt by the Court or Judge by which or by whom such order has been made. C. S. U. C. c. 74, s. 10.

Order not to be made in favour of mother guilty of adultery.

**4.** No order directing that the mother shall have the custody of or access to an infant shall be made by virtue of this Act, in favour of a mother against whom adultery has been established by judgment in an action for criminal conversation at the suit of her husband against any person. C. S. U. C. c. 74, s. 11.

## CHAPTER 131.

## An Act respecting the Support of Illegitimate Children.

---

Liability of father for necessities, s. 1.  
 Proof of paternity, s. 2.  
 Affidavit of mother before birth, ss. 3, 4.  
 Other remedies not affected, s. 5.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

**1.** Any person who furnishes food, clothing, lodging or other necessities, to any child born not in lawful wedlock, may maintain an action for the value thereof against the father of such child, if the child was a minor at the time the necessities were furnished, and was not then residing with his or her reputed father and maintained by him as a member of his family. C. S. U. C. c. 77, s. 4.

The father of an illegitimate child liable for necessities.

**2.** Where the person suing for the value of such necessities is the mother of such child, or a person to whom the mother has become accountable for such necessities, the fact of the defendant being the father of such child shall be proved by other testimony than that of the mother. C. S. U. C. c. 77, s. 5.

When proof other than that of the mother requisite.

**3.** No action shall be sustained under the two last sections, unless it is shown upon the trial thereof, that while the mother of the child was pregnant, or within six months after the birth of her child, she did voluntarily make an affidavit in writing, before some one of Her Majesty's Justices of the Peace for the County or City in which she resides, declaring that the person who is afterwards charged in such action is really the father of such child, nor unless she deposited such affidavit, within the time aforesaid, in the office of the Clerk of the Peace of the County, or Clerk of the Council of the City, as the case may be. C. S. U. C. c. 77, s. 6.

No action maintainable unless the mother makes affidavit before the birth of the child or within six months after.

**4.** Such affidavit shall not be evidence of the fact of the defendant being the father of such child. C. S. U. C. c. 77, s. 7.

Such affidavit not to be evidence.

**5.** This Act shall not take away or abridge any right of action or remedy which, without this Act, might have been maintained against the father of an illegitimate child. C. S. U. C. c. 77, s. 8.

Other remedies not to be affected.

### 3. *Guardian and Ward.*

CHAP. 132. Guardians of Infants, p. 1184.

## CHAPTER 132.

### An Act respecting Guardians of Infants.

Appointment by Surrogate Courts, s. 1, 2.	Removal of testamentary guardians, s. 8.
Security, s. 3.	Appointment of mother—main- tenance, s. 9.
Powers, s. 4.	Testamentary appointment by mo- ther, s. 10.
(1) Acting for infants.	Compulsory attendance of witnesses, s. 11.
(2) Appearing in actions.	Orders of Court, how enforceable, s. 12.
(3) Management of estate and care of person.	Father's authority in respect of re- ligious faith of child saved, s. 13.
(4) Binding as apprentice.	
Removal, s. 5.	
Power of Surrogate Courts in mat- ters of guardianship, s. 6.	
Practice in such cases, s. 7.	

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### APPOINTMENT BY SURROGATE COURTS.

To what Court  
the right of  
appointing  
guardians shall  
belong.

**1.** Where any infants have not a father living, or any legal guardian authorized by law to take the care of their persons and the charge of their estates) the Surrogate Court for the County within which any such infants reside may appoint guardians of such infants; and letters of guardianship granted by a Surrogate Court shall have force and effect in all parts of Ontario; and an official certificate of the grant may be obtained as in the case of letters of administration; and a return of every appointment and removal of a guardian shall be made by Registrars respectively to the Surrogate Clerk in like manner as is required by "*The Surrogate Courts Act*" in the case of grants of probate or administration; but this section shall not be construed as depriving the Court of Chancery of jurisdiction in such matters.. C. S. U. C. c. 74, s. 1.

**2.** Upon the written application of any such infant, or the friend or friends of such infant, residing within the jurisdiction of the Surrogate Court to which application is made, and after proof of twenty days' public notice of the application and of notice thereof to the mother of such infant, or that such infant has no mother living in Ontario, the Judge of such Court may appoint some suitable and discreet person or persons to be guardian or guardians of such infant. C. S. U. C. c. 74, s. 3.

When Judges of Surrogate Courts may appoint guardians.

**3.** The Judge shall take from the guardian or guardians so appointed a bond in the name of the infant, in such penal sum and with such securities as the Judge directs and approves, having regard to the circumstances of the case, and such bond shall be conditioned that the said guardian or guardians will faithfully perform the said trust, and that he or they, the said guardian or guardians, or his or their respective executors or administrators, will, when the said ward becomes of the full age of twenty-one years, or whenever the said guardianship is determined, or sooner if thereto required by the said Surrogate Court, render to his or their said ward, or to his or her executors or administrators, a true and just account of all goods, moneys, interest, rents, profits or property of such ward, which come into the hands of such guardian or guardians, and will thereupon without delay deliver and pay over to the said ward, or to his or her executors or administrators, the property or the sum or balance of money which may be in the hands of the said guardian or guardians belonging to such ward, deducting therefrom and retaining a reasonable sum for the expenses and charges of the said guardian or guardians, and such bond shall be recorded by the Registrar of the Court in the books of his office. C. S. U. C. c. 74, s. 4.

Such guardians to give security by bond.

Condition of bond.

Bond to be recorded.

### *Authority of Guardians.*

**1.** The guardian or guardians of any infant so appointed, during the continuance of his or their guardianship,

Guardians' authority.

1. Shall have authority to act for and in behalf of the said ward;

To act for ward.

2. May appear in any Court and prosecute or defend any action in his or her name;

To appear in actions at law.

3. Shall have the charge and management of his or her estate, real and personal, and the care of his or her person and education;

To manage real and personal estate, &c.

4. And in case the infant is under the age of fourteen years, may, with the approbation of two of Her Majesty's Justices of the Peace and the consent of such ward; or in case the infant is not under the age of fourteen years, then with the consent of the ward only, may place and bind him or her an apprentice to any

Bind ward an apprentice.



Limitation of apprenticeship.

lawful trade, profession or employment; such apprenticeship, in case of males, not extending beyond the age of twenty-one years, and in case of females, not beyond the age of eighteen years, or the marriage of the ward within that age. C. S. U. C. c. 74, s. 5.

### *Removal of Guardians.*

How guardians may be removed.

5. The Surrogate Judge by whom any guardian or guardians have been appointed under this Act, may, upon reasonable complaint made and sustained, or cause shown to his satisfaction, remove such guardian or guardians from his or their said guardianship, and if it be judged necessary, may appoint another guardian or guardians of the said infant. C. S. U. C. c. 74, s. 6.

### POWERS AND PRACTICE OF SURROGATE COURTS IN MATTERS OF GUARDIANSHIP.

In matters of guardianship. Courts to have same powers for examination of witnesses and enforcing decrees, &c., as in testamentary matters.

6. In all matters and applications touching or relating to the appointment, control or removal of guardians of any such infants, and the security to be given by such guardians and otherwise, the several Surrogate Courts shall have the like powers, jurisdiction and authority for the examination of witnesses, the production of deeds and writings, and generally for the enforcing of all orders, decrees and judgments made or given by such Surrogate Courts in respect to the appointment, control and removal of guardians as aforesaid, as are given to them by "*The Surrogate Courts Act*" in matters testamentary; and such orders, decrees and judgments may be appealed from to the Court of Appeal or a Judge thereof in the manner provided in said Act for appeals to such Court or Judge in matters testamentary. C. S. U. C. c. 74, s. 2; 40 V. c. 7, *Sched. A* (61).

Rev. Stat. c. 46.

Procedure under this Act.

7. The practice and procedure under the preceding sections of this Act, shall, except where otherwise provided for by Rules or Orders under "*The Surrogate Courts Act*," conform, as nearly as the circumstances of the case will admit, to the practice and procedure prescribed by the said Act, and all the powers given by the several sections of that Act, to the Judges appointed or to be appointed as contained in the seventy-third and seventy-fourth sections of said Act, may from time to time be exercised by them, for the purpose of simplifying and expediting the proceedings, and for fixing and regulating the fees to be taken by officers and by attorneys and counsel respectively for business and proceedings done and taken under this Act in the several Surrogate Courts. C. S. U. C. c. 74, s. 7.

Rev. Stat. c. 46.

### REMOVAL OF TESTAMENTARY GUARDIANS AND TRUSTEES.

Removal of testamentary guardians and trustees.

8. Testamentary guardians and trustees shall be removable by the Court of Chancery for the same causes as other guardians and trustees. 40 V. c. 8, s. 31 (3). *See also Rev. Stat. c. 40, s. 84.*

## APPOINTMENT OF THE MOTHER AS GUARDIAN IN CERTAIN CASES.

**9.** Any of the Superior Courts of Law or Equity or any Judge of any of the said Courts, or a Judge of the Surrogate Court, upon hearing the petition of the mother of a minor whose father is death, may appoint her to be guardian of the person of the minor, notwithstanding any testamentary provision to the contrary by the father or any appointment of another person as guardian by the father, if such appointment of the mother appears to the Court or Judge to be just and proper; and such Court or Judge may also make an order for the maintenance of the minor by payment out of any estate to which the minor is entitled, of such sum or sums of money, from time to time, as according to the value of the estate such Court or Judge thinks just and reasonable. 40 V. c. 8, s. 31 (1).

Appointment of mother as guardian to minor.

**10.** Any of the said Courts shall have power to give effect to a testamentary appointment of a guardian of the person of her infant children made by the mother of such children upon petition of the guardian so appointed notwithstanding a previous testamentary appointment by the father of such infants, where, owing to a change of circumstances or other cause, it may seem to such Court advisable in the interests of such infants so to do, and the Court may make an order for the maintenance of the infants as in the last preceding section mentioned. 40 V. c. 8, s. 31 (2).

Courts may give effect to testamentary appointment of a guardian by the mother.

**11.** The Court or Judge as aforesaid may enforce the attendance of any person before such Court or Judge, to testify on oath respecting the matter of such petition, by order or rule made for that purpose, and on the service of a copy thereof and the payment of expenses as a witness, in the same manner as in a suit or action in the said Courts respectively, or may receive affidavits respecting the matters in such petition. C. S. U. C. c. 74, s. 9; 40 V. c. 8, s. 31 (1 & 2).

Court or Judge in any such case may compel the attendance of witnesses.

**12.** All orders made by the Court or a Judge by virtue of this Act, shall be enforceable by process of contempt by the Court or Judge by which or by whom such order has been made. C. S. U. C. c. 74, s. 10; 40 V. c. 8, s. 31 (1 & 2).

Orders enforceable by process of contempt.

**13.** Nothing herein contained shall be construed to change the law as to the authority of the father in respect of the religious faith in which a child is to be educated. 40 V. c. 8, s. 31 (4).

Provide.

[See also sections 2, 3, 4, 5, 6, 16, 17 and 27 of Rev. Stat. c. 135].

## 4. *Master and Servant.*

CHAP. 133. Master and Servant, p. 1188.

„ 134. Masters and Workmen, Settlement of disputes between,  
p. 1192.

„ 135. Apprentices and Minors, p. 1198.

## CHAPTER 133.

### An Act respecting Master and Servant.

Slavery prohibited, s. 1.

Limitation of voluntary contracts of service, s. 2.

Participation of employees in profits of business, ss. 3, 4.

Written or verbal agreements as to service to be binding, s. 5.

Offences and penalties :—

Detention in pledge of servants' wearing apparel, s. 6.

Refusal to work, &c., *See* C. S. U. C. c. 75, s. 4.

Inducing servants to confederate, *See* C. S. U. C. c. 75, s. 5.

Adjustment of disputes, s. 7.

Agreements made out of, for performance of service in Ontario, s. 8.

Summary proceedings before Justices of the Peace, ss. 9-11. *See also* C. S. U. C. c. 75, ss. 7-11.

Non-payment of wages of servants, s. 12.

Cruelty to and ill-treatment of servants, C. S. U. C. c. 75, s. 12, p. 1191.

Appeals to General Sessions, s. 13.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

#### SLAVERY PROHIBITED.

Slavery prohibited.

1. The Lieutenant-Governor shall not grant a license for the importation of any negro or other person to be subjected to the condition of a slave, or to a bounden involuntary service for life, into any part of the Province of Ontario; nor shall any negro, or other person, who comes, or is brought into this Province, be subject to the condition of a slave, or to such service as aforesaid, within the same. C. S. U. C. c. 75, s. 1.

## MASTER AND SERVANT.

**2.** No voluntary contract of service or indentures entered into by any parties shall be binding on them, or either of them, for a longer time than a term of nine years from the day of the date of such contract. C. S. U. C. c. 75, s. 2.

No voluntary contract of service or indentures to be binding longer than nine years.

**3.** It shall be lawful in any trade, calling, business, or employment, for an agreement to be entered into between the workman, servant, or other person employed, and the master or employer, by which agreement a defined share in the annual or other net profits or proceeds of the trade or business carried on by such master or employer, may be allotted and paid to such workman, servant, or person employed, in lieu of or in addition to his salary, wages, or other remuneration; and such agreement shall not create any relation in the nature of partnership, or any rights or liabilities of co-partners, any rule of law to the contrary notwithstanding: and any person in whose favour such agreement is made, shall have no right to examine into the accounts, or interfere in any way in the management or concerns of the trade, calling, or business in which he is employed under the said agreement or otherwise; and any periodical or other statement or return by the employer, of the net profits or proceeds of the said trade, calling, business, or employment, on which he declares and appropriates the share of profits payable under the said agreement, shall be final and conclusive between the parties thereto and all persons claiming under them respectively, and shall not be impeachable upon any ground whatever. 36 V. c. 25, s. 1.

Agreements by which workmen, etc., may share in the profits of the business.

**4.** Every agreement of the nature mentioned in the last preceding section shall be deemed to be within the provisions of this Act, unless it purports to be excepted therefrom, or this may otherwise be inferred. 36 V. c. 25, s. 2.

Certain agreements within this Act.

**5.** All agreements or bargains, verbal or written, between masters and journeymen, or skilled labourers, in any trade, calling or craft, or between masters and servants or labourers, for the performance of any duties or service of whatsoever nature, shall, whether the performance has been entered upon or not, be binding on each party for the due fulfilment thereof; but a verbal agreement shall not exceed the term of one year. C. S. U. C. c. 75 s. 3.

Verbal as well as written agreements between master and servant to be binding.

**6.** No tavern keeper or boarding house keeper shall keep the wearing apparel of any servant or labourer in pledge for any expenses incurred to a greater amount than six dollars, and on payment or tender of such sum, or of any less sum due, such

Tavern keepers, etc., not to keep wearing apparel of servant in



pledge for any amount above \$6.

wearing apparel shall be immediately given up, whatever be the amount due by such servants or labourer; but this is not to apply to other property of the servant or labourer. C. S. U. C. c. 75, s. 6.

How certain differences between master and servant are to be decided.

7. If after the termination of an engagement between master and servant, any dispute arises between them in respect of the term of such engagement or of any matter appertaining to it, the Justice or Justices of the Peace who receive the complaint shall be bound to decide the matter, in accordance with the provisions of this Act, and as though the engagement between the parties still subsisted: but proceedings must be taken within one month after the engagement has ceased. 29 V. c. 33, s. 1.

Proviso.

Agreements made out of Ontario for the performance of service therein may be enforced in Ontario.

8. In case any written agreement or bargain is made out of Ontario for the performance of any duties or service within Ontario, which agreement or bargain, if it had been made within Ontario, could have been enforced therein under the provisions of this Act, or in respect of which agreement or bargain any proceedings might in such case have been had or taken under this Act, then such written agreement or bargain made as aforesaid without Ontario may be enforced in like manner, and the like proceedings may be had in respect thereof, upon the parties thereto being or coming within this Province as if such agreement had been made within Ontario. 36 V. c. 24, s. 1.

#### SUMMARY PROCEEDINGS BEFORE JUSTICES.

Duties of Justices of the Peace on receiving complaints against parties for contravention of this Act.

9. Any one or more of Her Majesty's Justices of the Peace may receive the complaints upon oath of parties complaining of any contravention of the preceding provisions of this Act, and may cause all parties concerned to appear before him or them, and shall hear and determine the complaint in a summary and expeditious manner. C. S. U. C. c. 75, s. 7.

What evidence to be taken.

10. Wherever the Justice takes the evidence of the complainant in support of his or her claim, the said Justice shall be bound to take the evidence of the defendant also, if tendered. 29 V. c. 33, s. 2.

Complaints may be in any County.

11. Complaints against any person under this Act may be prosecuted and determined in any County in which the person complained against is found. C. S. U. C. c. 75, s. 11.

Justices of the Peace may likewise hear complaints by

12. Any one or more of such Justices, upon oath of any such servant or labourer against his master or employer concerning any non-payment of wages, may summon such master or

employer to appear before him or them at a reasonable time to be stated in the summons, and he or they or some other Justice or Justices shall, upon proof on oath of the personal service of such summons, examine into the matter of the complaint, whether the master or employer appears or not, and upon due proof of the cause of complaint, the Justice or Justices may discharge such servant or labourer from the service or employment of such master, and may direct the payment to him of any wages found to be due, not exceeding the sum of forty dollars, and the said Justice or Justices shall make such order for payment of the said wages as to him or them seems just and reasonable, with costs, and in case of non-payment of the same, together with the costs, for the space of twenty-one days after such order has been made, such Justice or Justices shall issue his or their warrant of distress for the levying of such wages, together with the costs of conviction and of the distress. C. S. U. C. c. 75, s. 12.

the servants against the employer for misusage, non-payment of wages, &c., and may determine the same.

[Section 12 of C. S. U. C. c. 75 also makes provision as above for the determination of complaints by a servant or labourer against his master or employer concerning any "misusage, refusal of necessary provisions, cruelty or ill-treatment." The section is as follows:—

12. Any one or more of such Justices, upon oath of any such servant or labourer against his master or employer concerning any misusage, refusal of necessary provisions, cruelty, ill-treatment, or non-payment of wages, may summon such master or employer to appear before him or them at a reasonable time to be stated in the summons, and he or they or some other Justice or Justices shall, upon proof on oath of the personal service of such summons, examine into the matter of the complaint, whether the master or employer appears or not, and upon due proof of the cause of complaint, the Justice or Justices may discharge such servant or labourer from the service or employment of such master, and may direct the payment to him of any wages found to be due, not exceeding the sum of forty dollars, and the said Justice or Justices shall make such order for payment of the said wages as to him or them seems just and reasonable, with costs, and in case of non-payment of the same, together with the costs, for the space of twenty-one days after such order has been made, such Justice or Justices shall issue his or their warrant of distress for the levying of such wages, together with the costs of conviction and of the distress. 10, 11 V. c. 23, s. 8.]

Justices of the Peace may likewise hear complaints by the servants against the employer for misusage, non-payment of wages, &c., and may determine the same.

13. Any person who thinks himself aggrieved by any such conviction or order for the payment of wages, or by any order of dismissal from service or employment, or any order or decision of any Justice or Justices under this Act, may appeal in the same manner as is provided in *The Act respecting Summary Convictions before Justices of the Peace*; and in case of dismissal of the appeal or affirmance of the conviction, order

Appeals.  
Rev. Stat. c. 74.

or decision, the Court appealed to shall order and adjudge the offender to be punished according to the conviction; or shall enforce the order for payment of wages or of dismissal, as the case may be, and for the payment of the costs awarded, and shall, if necessary, issue process for carrying such judgment into effect, C. S. U. C. c. 75, s. 13.

## CHAPTER 134.

An Act to facilitate the adjustment of disputes between Masters and Workmen.

---

Short title, s. 1.	Chairman, s. 16.
Board of Arbitration, ss. 2-26.	Employment of counsel before,
Agreement to form, ss. 2-3.	s. 17.
Registration of memorandum of,	Duration of—filling of vacancies
ss. 4, 5.	in, s. 18, 19.
Formal defects, s. 6.	Voters—Qualification, s. 20.
Composition and appointment, ss.	Registration of, ss. 21,
7-8.	2.
Powers, ss. 9-10.	Returning officers, s. 23.
Award, s. 11.	Elections, ss. 24-26.
Enforcement of, s. 12.	Fees, by-laws, officers, &c., s. 27.
Evidence of, s. 13.	Future rate of wages not to be fixed,
Quorum, s. 14.	s. 28.
Committee of Reconciliation, s.	Domestic and farm servants not af-
15.	fected, s. 29.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

**1.** This Act may be cited as "*The Trades Arbitration Act.*"

Board of  
Arbitration.

**2.** Any number of masters and workmen resident and actually engaged at the time of filing the memorandum hereinafter mentioned in carrying on or working at any particular trade, occupation, or employment, in any City, Town, Township

or Village in this Province, may at a meeting specially convened for that purpose, agree to form a Board under this Act for the friendly settlement of differences between such masters and workmen. 36 V. c. 26, s. 1.

3. Such masters and workmen shall jointly sign a memorandum, whereby it is mutually agreed to establish such Board. Memorandum to be filed. 36 V. c. 26, s. 1.

2. Such memorandum shall set forth the number of the members of the Board, and also the names, occupation and residence of the signers of such memorandum, and shall be in the form of the Schedule to this Act, or to a similar effect. 36 V. c. 26, s. 1.

4. Upon the filing of such memorandum, with affidavits verifying the signatures thereto, in the Registry Office of the County or other Registration Division within which such masters and workmen reside, such Board shall be deemed to be lawfully established. Registration of memorandum. 36 V. c. 26 s. 1.

5. The Registrar shall retain the said memorandum and enter a copy of the same in a book to be kept for that purpose; for which and the filing of the said memorandum he shall be entitled to receive the sum of two dollars and no more. Fee. 36 V. c. 26, s. 1.

6. No defect in the form of said memorandum, or in the filing and registration thereof shall invalidate the efficiency of any of the proceedings to be taken thereunder under the provisions of this Act. Defects of form in memorandum. 36 V. c. 26, s. 1.

7. The said Board shall consist of not less than two masters and two workmen, nor more than ten masters and ten workmen and a Chairman, and the number to constitute the said Board other than the Chairman shall be inserted in the memorandum; but no member of the Board shall adjudicate in any case in which he or any relation of his is one of the parties. Board, how composed. 36 V. c. 26, s. 2.

8. The persons who have signed the said memorandum are hereby authorized to proceed to the appointment of such Board within sixty days after the registry of said memorandum, the masters appointing their portion of the Board from among themselves, and the workmen their portion from among themselves; and the said Board shall remain in office until the appointment of a new Board in its stead. Appointment of Board. 36 V. c. 26, s. 3.

9. The Board shall have power to appoint their own Chairman and two Clerks, one for the masters and the other for the workmen's portion thereof; and shall have power to hear and determine all questions of dispute and differences between the Powers of Board.



masters and workmen, being signers of the said memorandum, or who may at any time become parties thereto, by a written notice to the Chairman or Clerks of such Board, which disputes and differences may be submitted to them by both parties in difference. 36 V. c. 26, s. 4.

Power of  
Board.  
Rev. Stat. c.  
50.

**10.** The said Board shall also have and exercise all the powers conferred upon Arbitrators by "*The Common Law Procedure Act.*" 36 V. c. 26, ss. 1 & 4.

Award.

**11.** Any award the said Board may make in any case of disputes or differences so submitted to them shall be final and conclusive between the parties thereto, without being subject to review or challenge by any Court or authority whatsoever. 36 V. c. 26, s. 4.

Enforcing  
award.

**12.** Such award may be enforced upon summary application to the Judge of the County Court of the County in which such Board is formed; and the said Judge is hereby authorized to enforce such award by the order or rule of said Court and process of execution to be issued thereupon. 36 V. c. 26, s. 4.

Evidence of  
award.

**13.** Any award, in writing, under the hand of the Chairman of the Board, shall be deemed sufficient evidence of the validity of such award to authorize such proceedings of said Judge. 36 V. c. 26, s. 4.

Quorum.

**14.** A quorum of not less than three (one being a master, and another a workman, and the third the Chairman), may constitute a Board for the hearing and adjudication of cases of dispute, and may accordingly make their award. 36 V. c. 26, s. 5.

Committee of  
reconciliation.

**15.** A committee of the Board, to be denominated the Committee of Reconciliation, shall be appointed by the Board, consisting of one master and one workman, who shall sit at such times as shall be appointed, and be renewed from time to time as occasion may require; and all cases or questions of dispute which are submitted to the Board by both parties thereto, shall in the first instance be referred to the said committee, who shall endeavour to reconcile the parties in difference; when such reconciliation is not effected, the matter in dispute shall be remitted to the Board to be disposed of as a contested matter. 36 V. c. 26, s. 5.

Chairman.

**16.** The Chairman of the Board shall be some person unconnected with trade, and shall preside at the meetings of the Board, and shall be appointed at the first meeting; and when the votes of the Board are equal, the Chairman for the time being shall have the casting vote. 36 V. c. 26, s. 6.

When parties  
may employ  
counsel.

**17.** No counsel, solicitor, or attorney shall be allowed to attend on any hearing before the Board or the Committee of

Reconciliation, unless consented to by both parties. 36 V. c. 26, s. 7.

**18.** On the first Monday in November, in the year after the appointment of the first Board, and on the first Monday in November in each succeeding year, a Board and Chairman shall be appointed, who shall remain in office until the appointment of a new Board; and in case of vacancies arising between the fixed days of election in each year, caused by the death or removal of any member of the Board, or of the Chairman an election shall take place within fourteen days, and another member shall be elected to fill up the said vacancy from the class to which the member who has died or removed belonged, or a Chairman shall be appointed, as the case may be, and the member or Chairman so elected shall serve for the remainder of the year. 36 V. c. 26, s. 8.

Duration of Board.

Vacancies.

**19.** The masters shall appoint their portion of the Board, and the workmen their portion of the Board. 36 V. c. 26, s. 9, *last clause*.

Composition of Board.

**20.** For the purposes of this Act, the following persons being twenty-one years of age, and belonging to the particular trade to which the registered memorandum applies, shall be entitled to be registered as voters for the election of the Board, and shall be qualified to be elected members of such Board.

Qualification of Voters.

1. Every master who has been engaged in carrying on the said trade within the limits of the City, Town, Township, or Village wherein such Board is formed, for three calendar months previous to the first day of November in any one year.

2. Every workman who has served the regular term of apprenticeship required in such trade or calling, and has been working at his said trade for a like period within the same limits, and has signed said memorandum, or has given notice to the Chairman or Clerks of his assent thereto. 36 V. c. 26, s. 9.

**21.** The Clerk of each division of the Board shall respectively keep a register of every person claiming to have his name inscribed on the register as a voter for the Board, as master or workman respectively and distinct from each other.

Registration of Voters.

2. The said register shall contain the name and abode of each person engaged in the particular trade or occupation set forth in the said registered memorandum;

3. The said Clerk shall, upon payment of a fee of ten cents made to him, register the same immediately, or be liable to be fined for neglect.

4. The Board is hereby empowered to fix and determine the amount of such fine, but not to exceed the sum of five dollars, and such fines shall be applied to the funds of the said Board. 36 V. c. 26, s. 10.

**22.** In case it appears to the masters' or workmens' division of the Board respectively that any person ought not to be so registered as master or workman respectively, such division shall order the name of such person to be struck off such register. 36 V. c. 26, s. 10.

Returning  
Officers.

**23.** The Clerk of each division of the Board shall be the Returning Officer, and for the election of the masters' and workmen's portion thereof respectively, he shall convene meetings of masters and meetings of workmen respectively by advertisement or circular notice fourteen clear days previous to the first day of November. 36 V. c. 26, s. 11.

Elections.

**24.** Each class shall at such meetings proceed to nominate and elect members to the Board for the year next ensuing. 36 V. c. 26, s. 11.

Manner  
of Election

**25.** The votes shall be taken by show of hands or division of members, and in such place as each division of the Board may respectively authorize, and such Clerk shall declare to the said meeting the names of the candidates who are elected, and the same shall be final and conclusive. 36 V. c. 26, s. 11.

Declaration of  
elections.

**26.** Such Clerk shall, within seven days after the day of nomination, declare the number of votes given to each candidate, and those having received the largest number of votes shall be declared duly elected. 36 V. c. 26, s. 12.

Fees, by laws,  
officers, etc.

**27.** Every Board constituted under this Act shall from time to time make out a list of fees which shall be charged for any proceeding and other expenses under this Act; and shall appoint such officers as may be necessary, and make such by-laws, rules and regulations for their guidance, and for the taking and scrutiny of the votes given for the election of members of the Board; and also for the despatch of business, as they may deem necessary; such by-laws, rules, regulations and fees not being contrary to law. 36 V. c. 26, s. 13.

Board not to  
have power to  
establish rate  
of wages.

**28.** Nothing in this Act contained shall authorize the said Board to establish a rate of wages or price of labour or workmanship, at which the workmen shall in future be paid. 36 V. c. 26, s. 4.

Persons not  
affected by  
this Act.

**29.** This Act shall not be construed to extend to domestic servants, or servants in husbandry. 36 V. c. 26, s. 14.

## SCHEDULE.

(Section 3.)

## FORM OF MEMORANDUM.

Memorandum of agreement between us, the undersigned masters and workmen engaged in the trade, employment or occupation of \_\_\_\_\_ at the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_, under "*The Trades Arbitration Act*," whereby we, the undersigned, mutually agree to establish a Board for the settlement of differences between us, under the said Act.

Such Board shall (besides the Chairman) consist of \_\_\_\_\_ masters and the like number of workmen.

The names, occupation and residence of the undersigned masters are as follows :

NAMES.	OCCUPATION.	RESIDENCE.

The names, occupation and residence of the undersigned workmen are as follows :—

NAMES.	OCCUPATION.	RESIDENCE.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_.

Witness.

*Signatures.*



## CHAPTER 135.

## An Act respecting Apprentices and Minors.

Interpretation, s. 1.

Minors :—

Appointment and authority of guardians, ss. 2, 3.

Abandonment by parents, &c., s. 4.

May bind themselves to service in certain cases, s. 5.

Apprenticing, ss. 6-8.

Wages, s. 9.

Transference of apprentice, ss. 10, 11.

Duties of master, s. 12.

of apprentice, s. 13.

When indenture may be altered or annulled, ss. 14, 15.

Emancipation from guardian's authority, s. 16.

Cancellation of guardianship or apprenticeship in certain cases, s. 17.

Complaints, C. S. U. C. c. 76, ss. 9 & 10, p. 1201.

Proceedings on complaints against apprentice, ss. 18-20.

Harbouring absconding apprentice, s. 21.

When master may avoid indenture, s. 22.

Jurisdiction of General Sessions, s. 23.

Costs—Fines, ss. 24, 25.

Appeals, ss. 26-28.

Powers of charitable societies, s. 29

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

## INTERPRETATION.

Meaning of the word "master."

1. The word "Master," when it occurs in this Act, shall include any person or number of persons, male or female, carrying on business singly or in co-partnership, and any body corporate. C.S. U. C., c. 76, s. 20.

## GUARDIANS TO MINORS.

Power of parents, charitable societies, etc., to appoint guardians to minors.

2. Any parent, guardian, or any other person having the care or charge of a minor, or any charitable society authorized by the Lieutenant-Governor to exercise the powers conferred by this Act, and having the care or charge of a minor, may, with the minor's consent, if the minor is a male not under the age of fourteen years, or is a female not under the age of twelve years, and without such consent if he or she is under such age, constitute, by indenture, to be the guardian of the child, any respectable trustworthy person who is willing to assume, and by indenture or other instrument in writing does assume, the duty of a parent towards the child; but the parent shall remain liable for the performance of any duty imposed by law in case the guardian fails in the performance thereof. 38 V. c. 19, s. 2; 40 V. c. 8, s. 32.

3. The guardian shall thereupon possess the same authority over the child as he or she would have were the ward his or her own child, and shall be bound to perform the duties of a parent toward such ward. 38 V. c. 19, s. 3.

Authority of guardians.

#### RIGHTS AND LIABILITIES OF MINORS.

4. No minor who has been abandoned by his or her parent or guardian, or who is dependent upon charity for support, shall be removed from any public or private charitable institution, or from the custody or control of any private person who is charitably taking care of the minor, by the father or mother or guardian of the minor against the will of the head of such public or private charitable institution, or of such private person, without an order for such removal from a Judge of one of the Superior Courts of Law or Equity, or from the Judge of the County Court of the County, or Mayor or Police Magistrate of the City or Town where the minor is; and the Judge or other person hereby empowered to make an order for removal, may refuse to grant an order for the removal of the minor, unless he is satisfied that the removal will tend to the advantage and benefit of the minor. 38 V. c. 19, s. 7.

Parents and guardians of certain minors not to control their custody in certain cases except on order.

5. Where a minor over the age of sixteen years, who has no parent or legal guardian, or who does not reside with his parent or guardian, enters into an engagement written or verbal to perform any service or work, he shall be liable upon the same, and shall have the benefit thereof, as if he had been of legal age. 38 V. c. 19, s. 1.

Minors may bind themselves to labour in certain cases.

#### APPRENTICING MINORS.

6. A parent, guardian, or other person having the care or charge of a minor, or any charitable society being authorized by the Lieutenant-Governor in Council to exercise the powers conferred by this Act, and having the care or charge of a minor, the minor being a male and not under the age of fourteen years, may, with the consent of the minor, put and bind him as an apprentice by indenture to any respectable and trustworthy master-mechanic, farmer, or other person carrying on a trade or calling, for a term not to extend beyond the minority of the apprentice; or in case of a female not under the age of twelve years, may, with her consent, bind the minor to any respectable and trustworthy person carrying on any trade or calling, or to domestic service with any respectable and trustworthy person for any term not to extend beyond the age of eighteen years. 38 V. c. 19, s. 4.

Power of parents, charitable societies, etc., to bind minors.

7. Where the father of an infant child abandons and leaves the child with the mother, the mother, with the approbation of two Justices of the Peace, may bind the child as an apprentice to any person mentioned in the last section, until the child

The like power given to the mother when the father abandons

his infant children.

attains the age of twenty-one years in the case of a male ; and eighteen in the case of a female ; and an indenture to that effect, under the hand and seal of the mother and countersigned by such Justices shall be valid ; but no child, having attained the age of fourteen years, shall be so apprenticed, unless he or she consents. 38 V. c. 19, s. 5.

Certain minors may be apprenticed with consent.

8. In a City or Town, the Mayor, Judge of the County Court or Police Magistrate, and in a County, the Judge of the County Court of the County may put and bind for the like period to any person mentioned in the several sections of this Act, with the consent of such person and of the minor, any minor who is an orphan or has been deserted by his or her parents or guardian, or whose parents or guardian have been for the time committed to a Common Gaol or House of Correction, or any minor who is dependent upon public charity for support ; and such apprentice and the master of such apprentice shall be held in the same manner as if the apprentice had been bound by his or her parent. 38 V. c. 19, s. 6.

Wages of minors.

9. All wages reserved by any indenture or otherwise to be paid for the service of any minor shall, if not payable to the parent, be either payable to the minor or to some person for the benefit of the minor. 38 V. c. 19, s. 8.

If the master dies, apprentice to be transferred to his successor in the business.

10. If the master of the apprentice dies, the apprentice if a male, shall by act of law, be transferred to the person (if any) who continues the establishment of the deceased ; and such person shall hold the apprentice upon the same terms as the deceased if alive would have done. 38 V. c. 19, s. 9.

Apprentices may be transferred.

11. A master may transfer his apprentice, with his consent to any person who is competent to receive or take an apprenticeship, and who carries on the same kind of business. 38 V. c. 19, s. 10.

Duties of masters towards apprentices.

12. Every master shall provide to his apprentice, during the term of his apprenticeship, suitable board, lodging, and clothing, or such equivalent therefor as is mentioned in the indenture, and shall also properly teach and instruct him, or cause him to be taught and instructed, in his trade or calling. 38 V. c. 19, s. 11.

Duty of apprentices.

13. Every apprentice shall during the term of his apprenticeship faithfully serve his master, shall obey all his lawful and reasonable commands, and shall not absent himself from his service, day or night, without his consent. 38 V. c. 19, s. 12.

#### COMPLAINTS.

Alteration in mode of payment of wages

14. A Judge of the County Court or a Police Magistrate upon complaint made by any minor bound as aforesaid, or by any

person on his or her behalf, or by the person to whom an apprentice is bound, may alter the mode in which payment of wages is to be made, by directing payment to the apprentice, or to some other person, in lieu of the manner set out in the indenture; or may, upon proof of gross misconduct or neglect of duty annul the indenture of apprenticeship or of service, and may compel the person in whose possession, power, custody or control the indenture is, to produce and deliver the same in Court, in order to have the indenture cancelled, or to have the order varying the said indenture endorsed thereon, as the case may require. 38 V. c. 19, s. 13.

upon application for the purpose.

Indenture may be annulled for misconduct of master.

**15.** A County Court Judge or Police Magistrate may after allowing a reasonable time for production and delivery, issue a warrant for the imprisonment of the person in default, for any term not exceeding six months, unless the indenture or instrument is previously produced and delivered for the purpose aforesaid. 38 V. c. 19, s. 14.

Committal for refusing to produce indenture.

**16.** A Judge of the County Court or Police Magistrate, upon complaint of any minor over whom a person has been appointed guardian under the second section of this Act, or of any person on behalf of the minor, and upon proof of gross misconduct or neglect of duty on the part of the guardian, may emancipate the minor from the authority of the said guardian. 38 V. c. 19, s. 15.

Emancipation from authority of guardian.

**17.** A Judge of the County Court in any case, and a Police Magistrate in case the apprenticing of a child or the appointment of a guardian under this Act has not been by the parent of the child, may, on the application of either the parent or child, cancel the indenture of apprenticeship, if satisfied that the same was injudiciously or improperly entered into; or cancel the appointment of a guardian, and restore the child to the parent, if satisfied that the parent is a fit and proper person to take charge of the child; and in case such cancellation of the guardianship is on the application of the parent, the authority of the parent shall revive as if no guardian had been appointed. 38 V. c. 19, s. 16.

Cancellation of indenture of apprenticeship or appointment of guardian.

[C. S. U. C. c. 76, s. 9. *is as follows:*

9. Any Justice of the Peace, Mayor or Police Magistrate, on complaint made before him on oath, by an apprentice against his master, for refusing to furnish necessary provisions, or for misusage, cruelty, or ill treatment, shall summon the master to appear before him to answer the complaint, and shall thereupon, hear and determine the complaint, and on conviction shall levy on the offender a fine not exceeding twenty dollars, and issue a warrant of distress to collect the same and the costs, and in default of satisfaction of the distress shall imprison the offender in any Common Gaol for a term not exceeding one month, unless the fine and costs be sooner paid. 14, 15 V. c. 11, s. 6.]

Justices may hear and determine complaints by apprentices against their masters.



[*C. S. U. C. c. 76, s. 10, is as follows:*

And complaints by masters against their apprentices.

10. Any Justice, Mayor or Police Magistrate, shall also, on complaint of a master against his apprentice for refusing to obey his commands, or for waste or damage to property, or for any other improper conduct, cause the apprentice to come before him, and shall hear and determine the complaint, and on conviction, order such apprentice to be imprisoned in a Common Gaol or House of Correction for a term not exceeding one month. 14, 15 V. c. 11, s. 6.]

Liability of apprentice deserting his master's service.

18. In case an apprentice absents himself from his master's service or employment before the time of his apprenticeship expires, he may at any time thereafter, if found in Ontario, be compelled to serve his master for so long a time as he so absented himself, unless he makes satisfaction to his master for the loss sustained by such absence. 38 V. c. 19, s. 19.

How complaints may be heard.

19. In case an apprentice refuses to serve as above required or to make such satisfaction to his master, or to obey the lawful commands of his master, or in any other way refuses or neglects to perform his duty to his master, and if the master, or his overseer or agent, complains on oath to a Justice of the Peace or Police Magistrate, either in the County, City or Town where the master resides, or in any County, City or Town where the absconding apprentice is found, such Justice or Police Magistrate may cause the apprentice to be summoned to appear or be apprehended and brought before him, or before some other Justice of the Peace; and such Justice, upon hearing the complaint, shall determine what satisfaction shall be made by the apprentice to the master.

Committal of apprentice in certain cases, etc.

2. In case the apprentice does not give or make such satisfaction immediately, or in case the satisfaction is of such a nature as not to admit of immediate performance, if he does not give sufficient security to make such satisfaction, then the Justice or Police Magistrate may commit the apprentice to the Common Gaol or House of Correction of the County, City or Town, for any time not exceeding three months; and such imprisonment shall not release the apprentice from the obligation to make up the lost time to the master. 38 V. c. 19, s. 20.

Limitation of proceedings against absconding apprentice.

20. Where the apprentice has not left Ontario, or having left Ontario, has returned thereto, the master shall not proceed against the apprentice under this Act, except within three years next after the expiration of the term for which the apprentice contracted to serve, or next after his return, as the case may be. 38 V. c. 19, s. 21.

Penalty for employing or harbouring absconding apprentices.

21. Any person who knowingly harbours or employs an absconding apprentice, shall pay to the master of the apprentice the full value of the apprentice's labour; and such value shall be what the master would have received from the labour and service of the apprentice if he had continued faithfully in his

master's service ; and the master may recover the same in any Court having jurisdiction where the apprentice has been employed, or where the master resides. 38 V. c. 19, s. 22.

**22.** If an apprentice becomes insane, or is convicted of a felony, or is sentenced to the Provincial Reformatory, or to the Penitentiary, or absconds, his master may within one month thence next ensuing, but not afterwards, avoid the indenture of apprenticeship, from the time he gives notice in writing of his intention to do so to the other parties to the indenture, either by serving them with the notice or a copy thereof, or by inserting the same in the *Ontario Gazette*, or in a newspaper of the County or City where the master's establishment is situated. 38 V. c. 19, s. 23.

Indenture may be avoided if apprentice becomes insane, a convict, or absconds.

**23.** The Court of General Sessions of the Peace shall have a concurrent primary jurisdiction over offences committed against this Act, and shall also have authority to make any order which under this Act may be made by a Judge of the County Court. 38 V. c. 19, s. 24.

Act not to affect jurisdiction of General Sessions.

**24.** The Court of General Sessions, Judge, Police Magistrate or Justice, may, on any complaint or other proceeding under this Act, make such order as to payment of costs as appears just. 38 V. c. 19, s. 25.

Costs.

**25.** All fines imposed and collected under this Act shall be paid to the Treasurer of the local Municipality where the offence was committed. 38 V. c. 19, s. 26.

Application of fines.

#### APPEALS.

**26.** Either party may, except as to matters provided for in the next section, appeal to the Court of General Sessions from the decision of a Justice or Police Magistrate, under this Act, in manner provided for in cases of summary conviction ; and the said Court, when called upon to adjudicate upon an appeal in any matter under this Act, may make the like order as it might have made, had the complaint been brought before it in the first instance. 38 V. c. 19, s. 27.

Appeal to General Sessions.

**27.** There shall be an appeal to any Judge of one of the Superior Courts in Chambers from any order made by a Court of General Sessions, County Court Judge, or a Police Magistrate, cancelling or varying an indenture of apprenticeship, or cancelling the appointment of a guardian ; which appeal shall be by summary petition, a copy whereof shall be served upon the opposite party within ten days from the day upon which judgment is rendered, unless a Judge of one of the Superior Courts, or the Clerk of the Crown and Pleas of the Court of Queen's Bench, or the Referee in Chancery allows further time ; and the petition shall be returnable upon the tenth day after the day of service thereof.

Appeal to a Judge of Superior Court in Chambers.

Proceedings on appeal.

2. The Judge, Clerk or Referee aforesaid, in granting further time may impose such terms as to further evidence, costs and otherwise as he sees fit; but the adjudication on the appeal shall be by the Judge only. 38 V. c. 19, s. 28.

Order of  
Judge;

further evi-  
dence.

28. Such Judge, upon consideration of the evidence taken upon the hearing, (a certified copy whereof shall be produced before him,) and such further evidence aforesaid (if any) may make such order in the premises, and as to costs and otherwise, as he may consider fitting; or before adjudication upon the appeal, he may in his discretion permit further evidence, either written or oral, to be adduced upon such terms as he considers just. 38 V. c. 19, s. 29.

#### POWERS OF CHARITABLE SOCIETIES.

Charitable  
societies may  
be authorized  
to exercise  
powers under  
this Act.

29. The Lieutenant-Governor in Council may authorize any charitable society, incorporated or unincorporated, to exercise for a limited time or otherwise, the powers conferred by this Act, and may revoke or suspend any Order in Council made for that purpose; and after such revocation such Society shall not possess the authority to exercise such powers unless and until again authorized by Order in Council. 38 V. c. 19, s. 30.

## 5. *Landlord and Tenant.*

CHAP. 136.—Law of Landlord and Tenant, p. 1204.  
“ 137.—Overholding Tenants, &c., p. 1209.

### CHAPTER 136.

An Act respecting the Law of Landlord and Tenant.

Interpretation, s. 1.	Restriction on effect of waiver of a covenant, s. 11.
Apportionment of rents and certain other periodical payments, ss. 2-6.	Insurances not in conformity with a covenant, who entitled to benefit of, ss. 12, 13.
Apportionment of condition of re-entry, s. 7.	Leases to which Act applies, s. 14.
Merger of reversion expectant on a lease, s. 8.	Notice to quit, length of, in case of weekly or monthly tenancy, s. 15.
Restriction on abrogation of covenants by license, ss. 9, 10.	Copy of charges to be given on making distress, s. 16.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### INTERPRETATION.

1. In the construction of the five following sections of this Interpretation Act,

(1.) "Rents" shall include rent-service, rent-charge and rent-seek, and all periodical payments or renderings in lieu of or in nature of rent;

(2.) "Annuities" shall include salaries and pensions; and "Annuities."

(3.) "Dividends" shall include (besides dividends, strictly so called) all payments made by the name of dividend, bonus or otherwise out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments are usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increment, during and within the period for or in respect of which the payment of the same revenue is declared or expressed to be made; but the said word "dividends" shall not include payments in the nature of a return or reimbursement of capital. 37 V. c. 10, s. 4.

Imp. Act.  
33-34 V. c.  
35, s. 5.

#### APPORTIONMENT OF RENT.

2. All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise), shall like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly. 37 V. c. 10, s. 1.

Rents, &c., to  
accrue from  
day to day,  
and be ap-  
portionable in re-  
spect of time.

Imp. Act,  
33-34 V. c.  
35, s. 2.

3. The apportioned part of any such rent, annuity, dividend or other payment shall be payable or recoverable in the case of a continuing rent, annuity or other such payment when the entire portion, of which such apportioned part forms part, becomes due and payable, and not before; and in the case of a rent, annuity or other such payment determined by re-entry, death or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before. 37 V. c. 10, s. 2.

Apportioned  
part of rent,  
&c., to be pay-  
able when the  
next entire  
portion be-  
comes due.

Imp. Act,  
33-34 V. c.  
35, s. 3.

4. All persons and their respective heirs, executors, administrators and assigns, and also the executors, administrators and assigns, respectively, of persons whose interests determine with their own deaths, shall have such of the same remedies at Law and in Equity for recovering such apportioned parts as afore-

Persons shall  
have the same  
remedies for  
recovering  
apportioned  
parts as for  
entire portion.



Imp. Act, 33-34 V. c. 35, s. 4.

said, when payable (allowing proportionate parts of all just allowances), as they respectively would have had for recovering such entire portions as aforesaid, if entitled thereto respectively:

Proviso as to rents reserved in certain cases.

2. But persons liable to pay rents reserved out of or charged on lands or other hereditaments of any tenure, and the same lands or other hereditaments, shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person, who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent, and such apportioned part shall be recoverable from such heir or other person by the executors or other persons entitled under this Act to the same by action at Law or suit in Equity. 37 V. c. 10, s. 3.

Act not to apply to policies of assurance. Imp. Act, 33 34 V. c. 35, s. 6.

5. Nothing in the preceding provisions of this Act contained shall render apportionable any annual sums made payable in policies of assurance of any description. 37 V. c. 10, s. 5.

Nor where stipulation made to the contrary. 33-34 V. c. 35, s. 7.

6. The preceding provisions of this Act shall not extend to any case in which it is expressly stipulated that no apportionment shall take place. 37 V. c. 10, s. 6.

#### APPORTIONMENT OF CONDITION OF RE-ENTRY.

Apportionment of condition of re-entry in certain cases. Imp. Act 22-23 V. c. 35, s. 3.

7. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him. 29 V. c. 28, s. 4.

#### MERGER, &C., OF REVERSIONS.

Effect of surrender or merger of reversion expectant on a lease in certain cases. See Imp. Act 8 & 9 V. c. 106, s. 9.

8. Where the reversion expectant on a lease of any land merges or is surrendered, the estate, which for the time being confers, as against the tenant under the same lease, the next vested right to the same land, shall, to the extent of and for preserving such incidents to and obligations on the same reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the same lease. C. S. U. C. c. 90, s. 7 *and vide* s. 8.

## LICENSES.

**9.** Where any license to do any act which, without such license, would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, has been, at any time since the 18th day of September, 1865, or is, after this Act takes effect, given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made punishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done. 29 V. c. 28, s. 1.

Restriction on effect of license contained in lease, etc.  
Imp. Act 22-23  
V. c. 35, s. 1.

**10.** Where in any lease heretofore granted or to be hereafter granted, there is a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and at any time since the eighteenth day of September, 1865, or after the passing of this Act, a license has been or is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or has been or is given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be), over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license. 29 V. c. 28, s. 2.

Restricted operation of partial licenses.  
Imp. Act 22-23  
V. c. 35, s.

## WAIVER OF COVENANT.

**11.** Where any actual waiver of the benefit of any covenant or condition in any lease, on the part of any lessor, or his heirs, executors, administrators, or assigns, is proved to have taken place after the eighteenth day September, 1865, or after the passing of this Act in any one particular instance, such actual waiver shall not be assumed or deemed to extend to any instance

Actual waiver not to extend further than to the particular instance mentioned, and not to be deemed a general waiver.

Imp. Act 23-24 V. c. 38, s. 6.

or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition, unless an intention to that effect appears. 29 V. c. 28, s. 3.

#### INSURANCES.

Lessor to have benefit of an informal insurance.

Imp. Act 22-23 V. c. 35, s. 7.

**12.** The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire, shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relative to the building or other property covenanted to be insured, effected by the lessee or mortgagor in respect of his interest under the lease or in the property, or by any person claiming under him but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant. 29 V. c. 28, s. 7.

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.  
Imp. Act 22-23 V. c. 35, s. 8.

**13.** Where on the *bona fide* purchase, made since the eighteenth day of September, 1865, or after the passing of this Act, of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with a written receipt of the person entitled to receive the rent or his agent for the last payment of the rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability by way of forfeiture or damage or otherwise, in respect of any breach of the covenant committed at any time before the completion of the purchase of which the purchaser had not notice before the completion of the purchase; but this provision shall not take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant. 29 V. c. 28, s. 8.

To what leases the preceding provisions shall apply.  
Imp. Act 22-23 V. c. 35, s. 9.

**14.** The preceding provisions shall be applicable to leases for a term of years absolute, or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee or the life or lives of any other person or persons. 29 V. c. 28, s. 9.

#### LENGTH OF NOTICES TO QUIT.

Notice to quit in case of weekly or monthly tenants.

**15.** In the case of tenancies from week to week and from month to month, a week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, as the case may be, shall be deemed sufficient notice to determine, respectively, a weekly or monthly tenancy. 31 V. c. 26 s. 10.

COPY OF CHARGES TO BE GIVEN ON MAKING DISTRESS,

**16.** Every person who makes and levies any distress shall give a copy of demand, and of all the costs and charges of the distress, signed by him, to the person on whose goods and chattels the distress is levied. C. S. U. C. c. 123, s. 11. *See also Rev. Stat. c. 65, s. 9.*

Persons levying distress to give copy of charges to party distrained.

CHAPTER 137.

An Act respecting Overholding Tenants.

Interpretation, s. 1.	Costs, s. 7.
Application against overholding tenant, s. 2.	Witnesses, s. 8.
Proceedings before County Judge, ss. 3-5.	Other remedies saved, s. 9.
Removal to the Superior Courts, s. 6.	Entitling and service of papers, ss. 10-11.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

**1.** In the construction of this Act— Interpretation

(1.) “Tenant” shall mean and include an occupant, a sub-tenant, under-tenant, and his and their assigns and legal representatives; “Tenant.”

(2.) “Landlord” shall mean and include the lessor, owner, the person giving or permitting the occupation of the premises in question and the person entitled to the possession thereof, and his and their heirs and assigns and legal representatives. “Landlord.”

31 V. c. 26, s. 13.

**2.** In case a tenant, after his lease or right of occupation, whether created by writing or by verbal agreement, has expired, or been determined, either by the landlord or the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses, upon demand made in writing, to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord, or the agent of his landlord, may apply to the County Judge

Application to be made to the County Judge against overholding tenants upon affidavit.



of the County, or Union of Counties, in which such land lies, in Term or in Vacation, and wherever such Judge then is, setting forth, on affidavit, the terms of the demise or right of occupation, if verbal, and annexing a copy of the instrument creating or containing such demise or right of occupation, if in writing, (or if a copy cannot be so annexed by reason of the said writing being mislaid, lost or destroyed, or being in the possession of the tenant, or from any other cause, then annexing a statement setting forth the terms of the demise or occupation, and the reason why a copy of the said writing cannot be annexed,) and also annexing a copy of the demand made for the delivering up of possession, and stating also the refusal of the tenant to go out of possession, and the reasons given for such refusal if any were given, adding such explanation in regard to the ground of such refusal as the truth of the case may require; and this section shall extend and be construed to apply to tenancies from week to week, from month to month, from year to year, and tenancies at will, as well as to all other terms, tenancies, holdings or occupations. 31 V. c. 26, s. 2.

County Judge  
may appoint  
time and place  
for inquiry.

**3.** If, upon such affidavit, it appears to such County Judge that the tenant wrongfully holds, without colour of right, and that the landlord is entitled to possession, such Judge shall appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired, or has been determined by a notice to quit or otherwise, and whether the tenant, without any colour of right, holds the possession against the right of the landlord, and whether the tenant does wrongfully refuse to go out of possession, having no right to continue in possession, or how otherwise. 31 V. c. 26, s. 3.

Notice thereof  
to be served on  
the tenant.

**4.** Notice in writing of the time and place so appointed by the County Judge for holding such inquiry, shall be, by the landlord, served upon the tenant or left at his place of abode, at least three days before the day so appointed, if the place so appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the affidavit on which the appointment was obtained, and of the papers attached thereto. 31 V. c. 26, s. 4.

Proceedings  
in default of  
appearance.

**5.** If at the time and place appointed, as aforesaid, the tenant, having been duly notified, as above provided, fails to appear, the County Judge, if it appears to him that the tenant holds without colour of right, may order a writ to issue to the Sheriff, in the Queen's name, commanding him forthwith to place the landlord in possession of the premises in question; but if the tenant appears at such time and place, the County Judge shall, in a summary manner, hear the parties, and examine into the matter, and shall administer an oath or affirma-

In case of ap-  
pearance.

tion to the witnessess adduced by either party, and shall examine them; and if after such hearing and examination it appears to the County Judge that the case is clearly one coming under the true intent and meaning of the second section of this Act, and that the tenant holds without colour of right against the right of the landlord, then he shall order the issue of such writ, as aforesaid, otherwise he shall dismiss the case; and the proceedings, in any such case, shall form part of the records of the County Court; and the said writ may be in the words or to the effect of Form 1 or Form 2, in the Schedule to this Act, according as the tenant is ordered to pay costs or otherwise. 31 V. c. 26, s. 5.

Proceedings to form part of the records of the Court.

6. Where any such writ has been issued, either of the Superior Courts of Common Law may, on motion, before the end of the second Term after the issue of such writ, command such County Judge to send up the proceedings and evidence in the case to such Superior Court, certified under his hand, and may examine into the proceedings, and, if they find cause, may set aside the same, and may, if necessary, order a writ to issue to the Sheriff, commanding him to restore the tenant to his possession, in order that the question of right, if any appears, may be tried, as in other cases of ejectment. 31 V. c. 26, s. 6.

Removable on *certiorari*.

Writ of restitution.

7. The Judges of the Superior Courts of Common Law may from time to time, make such orders respecting costs, in cases under this Act, as to them seem just; and the County Judge before whom any such case is brought may, in his discretion, award costs therein, according to any such order then in force, and if no such order is in force, reasonable costs, in his discretion, to the party entitled thereto; and in case the party complaining is ordered to pay costs, execution may issue out of the County Court for such costs as in other cases in the County Court, wherein an order is made for the payment of costs. 31 V. c. 26, s. 7.

Judges of Superior Courts may make rules as to costs.

Execution.

8. The County Judge may cause any person to be summoned as a witness to attend before him in any such case, in like manner as witnesses are summoned in other cases in the County Court, and under like penalties for non-attendance, or refusing to answer in such case. 31 V. c. 26, s. 8.

Summoning witnesses.

9. Nothing herein contained shall in any way affect the powers of any Judge or Judges of the Superior Courts under the sixty-fifth, sixty-sixth, and sixty-seventh sections of "*The Ejectment Act*," or shall prejudice or affect any other right or right of action or remedy which landlords may possess in any of the cases herein provided for. 31 V. c. 26 s. 9.

Other remedies of landlords.

Rev. Stat. c. 51, ss. 65-67.

10. The proceedings under this Act shall be entitled in the County Court of the County or Union of Counties in which the premises in question are situate, and shall be styled:

Proceedings, how entitled.

“ In the matter of (giving the name of the party complaining), Landlord,  
against (giving the name of the party complained against) Tenant.”

31 V. c. 26, s. 11.

Service of  
papers.

**11.** Service of all papers and proceedings under this Act shall be deemed to have been properly effected if made as required by law, in respect of writs and other proceedings in actions of ejectment. 31 V. c. 26, s. 12.

### SCHEDULE OF FORMS.

## FORM 1.

(Section 5.)

## WRIT OF POSSESSION (WITH COSTS).

ONTARIO,                    {  
          TO WIT :            {

Victoria, by the Grace of God, of the United Kingdom of Great Britain  
and Ireland, Queen, Defender of the Faith.

[L. S.]

To the Sheriff of the

Greeting :

Whereas

of \_\_\_\_\_, Judge of the County Court  
of \_\_\_\_\_, by his order dated the \_\_\_\_\_  
day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_, made in pursuance of "*The  
Act respecting Overholding Tenants*," on the complaint of \_\_\_\_\_  
against \_\_\_\_\_, adjudged  
that \_\_\_\_\_ was entitled to the possession  
of \_\_\_\_\_  
with the appurtenances in your Bailiwick, and that a Writ should  
issue out of Our said Court accordingly, and also ordered and directed that  
the said \_\_\_\_\_  
should pay the costs of the proceedings had under the said Act, which by  
Our said Court have been taxed at the sum of \_\_\_\_\_

THEREFORE, WE COMMAND YOU that without delay you cause the said  
to have possession of the said land  
and premises, with the appurtenances : And We also command you that of  
the goods and chattels of the said  
in your Bailiwick, you cause to be made

being the said costs so taxed by Our said Court as aforesaid, and have that money in Our said Court immediately after the execution hereof, to be rendered to the said

And in what manner you shall have

Issued from the Office of the Clerk of the  
County Court of the County (or United  
Counties) of \_\_\_\_\_ Clerk.

executed this Writ make appear to Our said Court, immediately after the execution hereof, and have there then this Writ.

Witness,  
Court at  
of

, this  
A. D. 18

Judge of our said  
day  
  
Clerk

FORM 2.

(Section 5.)

WRIT OF POSSESSION (WITHOUT COSTS.)

ONTARIO.  
To Wit: {

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

[L. S.]

To the Sheriff of the  
Whereas  
Court of the

by his order dated the  
A. D. 18, made in pursuance of "The Act  
respecting Overholding Tenants," on the complaint of  
against  
adjudged that  
was entitled to the possession of

Greeting.  
Judge of the County

Issued from the Office of the Clerk of the  
County Court of the County (or United  
Counties) of  
Clerk.

And ordered that a writ should issue out of Our said Court accordingly :  
That We COMMAND YOU that without delay you cause the said  
to have possession of the said land and  
premises with the appurtenances, and in what manner you shall have executed this Writ make appear to Our said Court, immediately after the execution hereof, and have there then this Writ.

Witness  
Court at  
of

, this  
A.D. 18

Judge of our said  
day  
  
Clerk.



## 6. *Profession of the Law.*

---

CHAP. 138.—Law Society, p. 1214.

“ 139.—Barristers-at-Law, p. 1223.

“ 140.—Attorneys-at-Law, p. 1226.

“ 141.—Notaries Public, p. 1242.

---

### CHAPTER 138.

An Act respecting the Law Society of Upper Canada.

---

Law Society continued, ss. 1, 2.

Judges to be Visitors, s. 3.

Benchers, ss. 4-42.

Election, ss. 4-33.

Powers, ss. 34-42.

Law Benevolent Fund, s. 43.

Reporters, ss. 44-46.

Revenue and Expenditure, ss. 47, 48.

---

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### LAW SOCIETY CONTINUED.

Law Society  
continued.

**1.** The Law Society of Upper Canada shall continue as at present constituted, subject to the provisions of this Act, and to the by-laws, resolutions, rules and regulations of the said Society in force at the time this Act takes effect, except so far as the same are inconsistent with this Act, until altered by the Benchers of said Society pursuant to this Act. *See C. S. U. C. c. 33, s. 1; 34 V. c. 15, s. 2.*

Corporation  
continued.

**2.** The Treasurer and Benchers of the said Society, heretofore incorporated, and their successors, shall continue to be a body corporate and politic, by the name of the Law Society of Upper Canada, and without license of mortmain may purchase, take, possess, and after acquiring the same, sell, lease or depart with any lands, tenements or hereditaments for the purposes of the said Society, but for no other purpose, and may execute all other matters appertaining to them to do. *C. S. U. C. c. 33, s. 2.*

## VISITORS.

3. The Chief Justices and Puisne Justices of the Superior Courts of Common Law, and the Chancellor and Vice-Chancellors of the Court of Chancery, shall be Visitors of the Society. C. S. U. C. c. 33, s. 3.

## BENCHERS.

4. The Attorney-General of Canada for the time being and every person who has held that office, if a member of the Bar of Ontario, and the Attorney General for the time being of Ontario, and all members of the Bar of Ontario, who have at any time held the office of Attorney-General of Ontario, or of Attorney-General or Solicitor-General for that part of the late Province of Canada, formerly called Upper Canada, and any retired Judge or Judges of the Superior Courts of Law or Equity for Ontario, shall respectively *ex-officio* be Benchers of the Society. 34 V. c. 15, s. 4; 39 V. c. 31, s. 8.

*Ex-officio*  
Benchers.

5. The Benchers of the Law Society, exclusive of *ex-officio* members, shall be thirty in number, to be elected as hereinafter provided. 34 V. c. 15, s. 3.

Elective  
Benchers.

6. The Benchers shall, during the Term next preceding an election, appoint two persons, who, with the Treasurer, shall act as scrutineers at the election; and the said Benchers shall also, during the said preceding Term, appoint a third person, who shall act for and as the Treasurer, in case he should be absent during the meeting of the scrutineers to count the votes. 34 V. c. 15, s. 16.

Appointment  
of scrutineers.

7. The first election after this Act takes effect shall be held on the first Thursday after the first Wednesday in April, one thousand eight hundred and eighty one, and the subsequent elections shall be held on the first Thursday after the first Wednesday in April of every fifth year thereafter; but in case the scrutineers are unable to complete the scrutiny upon such day, the same shall be continued from day to day until the election is declared. In case any scrutineer is absent during such scrutiny the others may nevertheless proceed therewith. 34 V. c. 15, s. 17.

Election, when  
to be held.

8. Each member of the Bar, not hereinafter declared ineligible as an elector, may vote for thirty persons. 34 V. c. 15, s. 5.

Who may  
vote.

9. Such votes shall be given by closed voting papers, in the form in the Schedule to this Act, or to the like effect, being delivered to the Secretary of the Law Society on the first Wednesday of April of the year proper for such election, or during the Monday and Tuesday immediately preceding. Any voting

Votes to be  
given by vot-  
ing papers.

papers received by the said Secretary by post during said days, or during the preceding week, shall be deemed delivered to him. 34 V. c. 15, s. 6.

Scrutiny.

**10.** The said voting papers shall, upon the Thursday following, be opened by the Secretary of the Law Society in the presence of the scrutineers, who shall scrutinize and count the votes, and keep a record thereof in a proper book to be provided by the said Society. 34 V. c. 15, s. 7.

Persons receiving the most votes to be elected.

**11.** The thirty persons who have the highest number of votes shall be Benchers of the said Law Society for the next term of five years. 34 V. c. 15, s. 8.

Who may be present at opening of voting papers.

**12.** Any person entitled to vote at such election shall be entitled to be present at the opening of the said voting papers. 34 V. c. 15, s. 9.

Equality of votes.

**13.** In case of an equality of votes between two or more persons, which leaves the election of one or more of such Benchers undecided, then the said scrutineers shall forthwith put into a ballot-box a number of papers, with the names of the candidates having such equality of votes written thereon, one for each candidate, and the Secretary of the said Society shall draw by chance from such ballot-box, in the presence of the said scrutineers, one or more of such papers sufficient to make up the required number, and the persons whose names are upon such papers so drawn shall be such Benchers. 34 V. c. 15, s. 10.

Voters to pay their bar fees.

**14.** No person shall be entitled to vote as an elector at such election unless all his bar fees to the Law Society have been paid. 34 V. c. 15, s. 11.

List of voters

**15.** The Secretary of the Law Society shall, on the first day of the Term previous to the time for any election, make out an alphabetical list or register of the members of the Bar who are entitled to vote at the succeeding election, and such register may be examined by any member of the said Society at all reasonable times, at the office of the said Secretary.

Complaints of errors in the list to be made to the Secretary,

with an appeal to the scrutineers.

**2.** In case any member of the said Society complains to the said Secretary, in writing, of the improper omission or insertion of any name in the said list, it shall be the duty of the Secretary forthwith to examine into the complaint and rectify such error if any there be; and in case any person is dissatisfied with the decision of the said Secretary, he may appeal to the persons who have been appointed to act as scrutineers for the next election thereafter, and the decision of such scrutineers shall be final, and such list shall remain or be altered in accordance with such decision.

3. The Secretary shall add to such list the names of all persons who have been called to the Bar during the Term previous to such election; and no alterations shall be made to such lists except as is provided in this section; and the said list, as it stands revised upon the last Monday of the said last-mentioned Term, shall be held to be the register of persons entitled to vote at the next election.

Persons called to the bar in Term previous to be added to list.

4. No person whose name is not inserted in the said list shall be entitled to vote at such election. 34 V. c. 15, s. 12.

16. No person shall be eligible as a Benchers at any election, who is not qualified to vote at such election. 34 V. c. 15, s. 14.

Qualifications of Benchers.

17. At all elections retiring Benchers shall be eligible for re-election. 34 V. c. 15, s. 31.

Retiring benchers eligible.

18. Any votes cast for any person who is ineligible to be a Benchers, or who is a Benchers *ex officio* shall be null and void; and the election shall be declared as if such votes had not been cast. 34 V. c. 15, s. 13.

Void votes.

19. In the event of any elector placing more than thirty names on his voting paper, the first thirty only shall be taken, notwithstanding any of such thirty persons so named may be ineligible for election from any cause whatever. 34 V. c. 15, s. 18.

Voting for more than thirty members.

20. Upon the completion of the scrutiny the said Secretary shall forthwith declare the result of said election and report the same to the said Society, and shall cause the names to be published in the next two issues of the *Ontario Gazette*. 34 V. c. 15, s. 15.

Declaration of election.

21. The Benchers of said Society may make such regulations as they consider expedient, not contrary to the provisions of this Act, for regulating the procedure under the preceding sections of this Act, and for the remuneration of the scrutineers appointed under this Act. 34 V. c. 15, s. 19.

Regulations for elections and remuneration to scrutineers

22. The said voting papers belonging to any election shall not be destroyed until after all petitions in respect to such election have been decided, but the same shall together with all other papers in connection with the said election be retained by the Secretary. 34 V. c. 15, s. 20.

Voting papers to be kept.

23. No person shall sign the name of any other person to any voting paper, under this Act, or alter, or add to, or falsify, or fill up any blank in any voting paper signed by another person, or deliver or cause to be delivered, or send or cause to be sent, by post or otherwise to the said Secretary, any such false voting paper, or any voting paper which has been added

False voting.



to, or falsified or in which any blank has been filled up after the same was signed. 34 V. c. 15, s. 21.

Absence of  
Secretary.

**24.** In the event of there being no Secretary for the time being of the Law Society at the time at which any election under this Act is to be held, or in the event of such Secretary being unable from illness or other unavoidable cause to act at such elections, then and in such case the Treasurer for the time being of the Law Society shall appoint under his hand some other person to act as such Secretary, and such person so appointed shall perform all the duties of such Secretary, as prescribed by this Act. 34 V. c. 15, s. 22.

Term of office  
of Benchers.

**25.** The persons so elected Benchers as aforesaid shall take office on the first day of Easter Term following their election, and shall hold office until the beginning of the fifth Easter Term after they have entered on their said office, or till the election of their successors. 34 V. c. 15, s. 23.

Vacation of  
seat for non-  
attendance.

**26.** The seat of any Benchers, who has failed to attend the meetings of the Benchers for three consecutive Terms, shall at the expiration of the said period become vacant. 34 V. c. 15, s. 23.

Committee on  
election  
petitions.

**27.** The majority of the Benchers present at any meeting in the first Easter Term after their election, may appoint a committee of their number to enter upon any enquiry with respect to the due election of any of the said Benchers whose election or elections may be petitioned against by any member of the Bar who voted at the election of such Benchers or Benchers, and, after such enquiry, to report such Benchers or Benchers as duly or not duly elected or qualified according to the fact, and, if necessary, to report the name or names of the next in order of votes of the duly qualified members of the Bar, in lieu of the person or persons petitioned against and reported not duly elected or qualified; and on the confirmation of the said report by the majority of Benchers (other than those petitioned against) present at any meeting for that purpose, the person or persons so reported, in lieu of those petitioned against as aforesaid shall be taken and deemed to be the duly elected and qualified Benchers or Benchers. 34 V. c. 15, s. 24.

Time for filing  
election  
petitions.

**28.** No petition against the return of any Benchers shall be entertained unless such petition is filed with the Secretary of the Law Society at least ten days before the first day of Easter Term next succeeding such election, and shall contain a statement of the grounds on which such election is disputed, and unless a copy of such petition is served upon the Benchers whose election is disputed at least ten days before the first day of the said Easter Term; and no grounds not mentioned

Contents of  
petitions.

in the petition shall be gone into on the hearing of such petition. 34 V. c. 15, s. 25.

**29.** On any such notice being duly filed as aforesaid, the Benchers shall during the first week of the Easter Term succeeding such election, appoint a day for the hearing of such petition, and give notice of such day to the petitioner and to the person whose return is disputed; but all such petitions shall be finally disposed of during the said Easter Term. 34 V. c. 15, s. 26.

Hearing petitions.

**30.** On the hearing of any such petition the Benchers shall have power to examine witnesses under oath; and a summons under the hand of the Treasurer of the Law Society, or under the hand of three Benchers, for the attendance of a witness, shall have all the force of a subpoena; and any witness not attending in obedience thereto, shall be liable to attachment in any of the Superior Courts. 34 V. c. 15, s. 27.

Powers of Benchers on hearing petitions.

**31.** Any person petitioning against the return of any Benchers shall deposit with the Secretary of the Law Society the sum of one hundred dollars to meet any costs which such Benchers may be put to in the opinion of the Committee before which such petition is heard; and such Committee shall have power in the event of such petition being dismissed, to award such sum to be paid to the Benchers petitioned against as in their opinion is just; and shall have power in their discretion in the event of such Benchers being decided to be not duly elected or qualified, to award costs to the petitioner; and the costs so awarded shall be recoverable in any Court of competent jurisdiction. 34 V. c. 15, s. 28.

Petitioners to deposit \$100 with Secretary for costs.

**32.** The Benchers shall, on the first meeting after their election, proceed to elect one of their body as Treasurer, who shall be the President of the Society; and such Treasurer shall hold office until the appointment of his successor; and the election of Treasurer shall take place on the first Saturday of Easter Term in every year; provided that the retiring Treasurer shall be eligible for re-election. 34 V. c. 15, s. 29.

Power of committee as to costs.

Election of Treasurer.

**33.** In case of the failure in any instance to elect the requisite number of duly qualified Benchers, according to the provisions of this Act, or in case of any vacancy caused by the death or resignation of any Benchers, or by any other cause, then it shall be the duty of the remaining Benchers, with all convenient speed, at a meeting to be specially called for the purpose, and to be held during the next Term thereafter, to supply the deficiency in the number of Benchers failed to be elected as aforesaid, or caused by any of the means aforesaid, by appointing to such vacant place or places, as the same may occur, any person or persons duly qualified under the provi-

Vacancies among Benchers, how filled up.

sions of this Act to be elected as a Benchers or Benchers ; and the person or persons so elected shall hold office for the residue of the period for which the other Benchers have been elected. 34 V. c. 15, s. 30.

#### POWERS OF THE BENCHERS.

The Benchers,  
etc., may  
make rules.

**34.** The Benchers may from time to time in convocation make rules for the government of the Law Society, and other purposes connected therewith, under the inspection of the Visitors. C. S. U. C. c. 33, s. 5.

Appointment  
of officers.

**35.** The Benchers may appoint such officers and servants as may be necessary for the management of the business of the said Law Society. 39 V. c. 31, s. 7.

Legal educa-  
tion.

**36.** The Benchers may make rules for the improvement of legal education ; and may appoint readers and lecturers with salaries ; and may impose fees and prescribe rules for the attendance of students and articulated clerks at such readings or lectures, and for examinations thereon, as conditional to call to the Bar, or admission as Attorney ; and may establish scholarships in connection therewith ; and may for proficiency at examination, by rules to be established specially in that respect, diminish the number of years of studentship on the books of the Society, or under articles of clerkship, but so as not to reduce the number of years for call to the Bar or admission as Attorney to less than three. 35 V. c. 6, s. 4.

Terms of stu-  
dentship may  
be reduced.

Call to the  
Bar.

**37.** The Benchers shall have the power heretofore exercised to call and admit to the practice of the Law as a Barrister any person duly qualified to be so admitted, according to the provisions of law and the rules of the Society. C. S. U. C. c. 33, s. 1.

Admission of  
students and  
barristers.

**38.** The Benchers may from time to time make all necessary rules, regulations and by-laws and dispense therewith from time to time to meet the special circumstances of any special case respecting the admission of students at law, the periods and conditions of study, the call or admission of Barristers to practise the Law, and all other matters relating to the discipline and honour of the Bar. 39 V. c. 31, s. 1.

The Law So-  
ciety to make  
rules for the  
examination  
of candidates  
for admission  
as Attorney.

**39.** The Benchers with the approbation of the Visitors (including one at least of the Judges of each of the Superior Courts of Law and Equity), shall from time to time make such Rules as they consider necessary for conducting the examination of persons applying to be admitted as Attorneys or Solicitors, as well touching the articles and service, and the several certificates required by law to be produced by them before their admission, as to the fitness and capacity of such persons to act as Attorneys or Solicitors ; and the Society may from time to time nominate and appoint Examiners for conducting such examinations. C. S. U. C. c. 35, s. 8. *See also Rev. Stat. c. 140, s. 8.*

**40.** In any of the foregoing cases where it appears to the Benchers expedient for purposes of further inquiry or investigation, they may suspend, for a period not exceeding twelve months, their final decision in respect to the granting or refusal of the certificate. C. S. U. C. c. 35, s. 9.

When Law Society may suspend decision.

**41.** The Benchers from time to time may also make all necessary rules, regulations and by-laws and dispense therewith from time to time, to meet the special circumstances of any special case respecting the service of articled clerks, the period and conditions of such service, and the admission of Attorneys or Solicitors to practise in the Courts, and all other matters relating to the discipline and practice of such Attorneys, Solicitors and articled clerks. 39 V. c. 31, s. 2.

Articled clerks and admission of attorneys.

**42.** Whereas certain petitions were presented to the Legislature of the Province during its Session held in the thirtieth year of Her Majesty's reign, praying for special Acts for the admission of the petitioners to practise as Barristers or Attorneys and Solicitors,—the Law Society may in their discretion, upon payment of the usual fees therefor, call to the Bar as Barristers, or admit to practise as Attorneys and Solicitors, such of the said petitioners as have so petitioned, upon proper proof of the allegations in said petitions, and upon their passing the usual final examination prescribed by the rules of the said Law Society for Barristers or Attorneys and Solicitors; provided they come within the classes of cases in which the Legislature of this Province, prior to the said Session, authorized, by special Acts, the admission of Barristers, or Attorneys and Solicitors. 39 V. c. 31, s. 9.

Admission of certain persons to practise as barristers or attorneys.

#### LAW BENEVOLENT FUND.

**43.** The Benchers may by by-law establish a fund for the benefit of the widows and orphans of Barristers, Attorneys and Solicitors, and of persons who have been such, to be called "The Law Benevolent Fund," and may make all necessary rules and regulations for the management and investment of the said fund, and the terms of subscription and appropriation thereof, and the conditions under which the widows and orphans of such persons shall be entitled to share in the said fund. 39 V. c. 31, s. 4.

Widow's and orphans' fund.

#### REPORTERS.

**44.** The Benchers may from time to time appoint such persons, being members of the Law Society, of the degree of Barrister-at-Law, as they may think proper, to be editors and reporters of the decisions of the Court of Appeal and the Superior Courts.

Reporters to be appointed by the Benchers.

2. Such persons shall hold office at the pleasure of the said Benchers, and shall be amenable to them in convo-



cation for the correct and faithful discharge of their respective duties, according to such regulations as the said Benchers may from time to time make in respect thereof. 35 V. c. 6, s. 1.

Benchers to make regulations regarding the reports.

**45.** The Benchers shall make regulations for the printing and publishing the said reports of the said decisions, and the distribution of the said reports, and the price and mode of issuing thereof, and all such other regulations in respect thereto, as they may at any time consider necessary; and any profits arising from the said reports shall form part of the general funds of the Law Society. 35 V. c. 6, s. 2.

Salaries of reporters.

**46.** The Benchers shall from time to time determine the salaries to be allowed to the said editors and reporters, and shall pay the same out of the general funds of the Society. 35 V. c. 6, s. 3.

#### REVENUE AND EXPENDITURE.

Appropriation of certain fees.

**47.** The fees payable by Barristers, as term fees, and on call to the Bar, and by Attorneys on admission as Attorneys, and for the annual certificate to practise, and by students and articulated clerks on admission as such, and on examinations and attendance on lectures and readings, shall be paid into the general funds of the Law Society, and shall be such as the Law Society by rule from time to time prescribes. 35 V. c. 6, s. 6; 39 V. c. 31, s. 3. *See also Rev. Stat. c. 140, s. 16 (4).*

Benchers to furnish members with details of revenue, etc.

**48.** The Benchers shall, during Hilary Term in each year, furnish to each member of the Law Society entitled to vote at the election of Benchers, a statement in detail of the revenue and expenditure of such Law Society, for the year ending the thirty-first day of December preceding each statement, the same to be first duly audited by auditors appointed by said Benchers to audit and report upon the finances of the said Law Society. 35 V. c. 6, s. 7.

---

## SCHEDULE.

(Section 9.)

### FORM OF VOTING PAPER.

*Law Society Election, 18 .*

I, \_\_\_\_\_, of the \_\_\_\_\_ in the County of \_\_\_\_\_,  
Barrister-at-Law, do hereby declare—  
1. That the signature affixed hereto is my proper handwriting.

2. That I vote for the following persons as Benchers of the Law Society :—

A. B., of the	, in the County of
C. D., of the	, in the County of
E. F., of the	, in the County of
G. H., of the	, in the County of
I. J., of the	, in the County of
&c.	&c.

3. That I have signed no other voting paper at this election.

4. That this voting paper was executed on the day of the date thereof.

Witness my hand, this      day of      , A.D. 18      .

## CHAPTER 139.

### An Act respecting Barristers-at-Law.

Who may be admitted, s. 1.  
Queen's Counsel, s. 2.  
Precedence at the Bar, ss. 3-7.

HER MAJESTY. by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows :

1. Subject to any rules, regulations or by-laws made by the Benchers of the Law Society of Upper Canada under *The Act respecting the Law Society of Upper Canada*, the following persons, and no others, may be admitted to practise at the Bar in Her Majesty's Courts of Law and Equity in Ontario :

Who may be admitted to practise at the Bar.  
See Rev. Stat. c. 138, ss. 36-38 & 42.

1. Any person of the age of twenty-one years, who, having been entered of and admitted into the "Law Society of Upper Canada" as a student of the laws, has been standing on the books thereof for five years, and has conformed himself to the rules of the Society. C. S. U. C, c. 34, s. 1 (1)

Students of five years' standing.

2. Any person who has been admitted into and stands on the books of the Law Society of Upper Canada, as a student of the laws for three years, and has conformed himself to the rules of the Society.

Certain students may be admitted after three years' study.

of said Society, and has, prior to the date of his admission to the said Society, and to the books of the said Society as a student, actually taken and had conferred upon him the degree of Bachelor of Arts or Bachelor of Law in any of the Universities of the United Kingdom of Great Britain and Ireland, or of any University or College in this Province or in the Province of Quebec, having power to grant degrees. 23 V. c. 47, s. 2.

Barristers  
England,  
Ireland and  
Scotland.

3. Any person who has been duly called to the Bar of any of Her Majesty's Superior Courts in England, Scotland or Ireland, not being Courts of merely local jurisdiction. C. S. U. C. c. 34, s. 1 (3).

Admission of  
lawyers or  
students from  
Quebec to the  
Bar of Ontario.

4. Any person who has been duly authorized to practise as an Advocate, Barrister, Attorney, Solicitor and Proctor at Law, in all Courts of Justice in Quebec, or who has been found capable and qualified, and entitled to receive a diploma for that purpose under the provisions of the Acts respecting the incorporation of the Bar of Quebec, or who has been duly registered as a clerk and studied during the periods for study respectively required under the provisions of the said Acts, on producing sufficient evidence thereof, and also on producing testimonials of good character, and undergoing an examination in the Law of Ontario, to the satisfaction of the Law Society of Upper Canada, and upon his entering himself of the said Society, and conforming to all the rules and regulations thereof. C. S. C. c. 75, s. 1.

Barristers of  
other Pro-  
vinces.

5. Any person who has been duly called to the Bar of any of Her Majesty's Superior Courts in any of Her Majesty's Provinces of North America in which the same privilege would be extended to Barristers from Ontario, and who produces sufficient evidence of such call and testimonials of good character and conduct to the satisfaction of the Law Society. C. S. U. C. c. 34, s. 1 (4).

#### QUEEN'S COUNSEL.

Appointment  
of Queen's  
Counsel.

2. It was and is lawful for the Lieutenant-Governor by letters patent, under the Great Seal of the Province of Ontario, to appoint from among the members of the Bar of Ontario, such persons as he may deem right to be, during pleasure, Provincial Officers under the names of Her Majesty's Counsel learned in the Law for the Province of Ontario. 36 V. c. 3, s. 1.

Order of pre-  
cedence at the  
Bar. |

3. The following members of the Bar of this Province shall have precedence in the Courts of this Province in the following order :

1. The Attorney-General of Canada for the time being ;
2. The Attorney-General of Ontario, for the time being ;

3. The members of the said Bar who have filled the offices of Attorney-General for the late Province of Upper Canada, or Attorney-General of the Dominion of Canada, or Attorney-General of this Province, according to seniority of appointment as such Attorney-General;

4. The members of the said Bar who have filled the office of Solicitor-General for Upper Canada according to seniority of appointment as such Solicitor-General; and

5. The members of the Bar who were, before the first day of July, in the year of our Lord one thousand eight hundred and sixty-seven, appointed Her Majesty's Counsel for Upper Canada, so long as they are such Counsel, according to seniority of appointment as such Counsel. 36 V. c. 4, s. 1.

4. The Lieutenant-Governor by letters patent under the Great Seal of Ontario may grant to any member of the Bar a patent of precedence in the said Courts. 36 V. c. 4, s. 2.

5. Members of the Bar from time to time appointed after the first day of July, in the year of Our Lord one thousand eight hundred and sixty-seven, to be Her Majesty's Counsel for the Province, and members of the Bar to whom, from time to time, patents of precedence are granted, shall severally have such precedence in the said Courts as may be assigned to them by letters patent, which may be issued by the Lieutenant-Governor under the Great Seal. 36 V. c. 4, s. 3.

6. The remaining members of the Bar shall, as between themselves, have precedence in the said Courts in the order of their call to the Bar. 36 V. c. 4, s. 4.

7. Nothing in this Act contained shall in any wise affect or alter any rights of precedence which may appertain to any member of the Bar when acting as Counsel for Her Majesty, or for any Attorney-General of Her Majesty, in any matter depending in the name of Her Majesty or of the Attorney-General before the said Courts, but such right and precedence shall remain as if this Act had not been passed. 36 V. c. 5, s. 5.



## CHAPTER 140.

## An Act respecting Attorneys-at-Law.

Admission and enrolment necessary, s. 1.	Acting as agents of unqualified persons, s. 25.
Who may be admitted, ss. 2, 3.	Default in paying over moneys collected, s. 26.
Service of article clerks, s. 4.	Practising without being admitted, s. 27.
Conditions of admission, s. 5.	Practising while holding certain offices, s. 28.
Examinations, ss. 6-9.	Attorneys not to practise while engaged in business, s. 29.
Final proceedings for admission, ss. 10, 11.	Striking off the roll :
Fees, s. 12.	Time for, limited in certain cases, s. 30.
Annual certificates, ss. 13-14.	Proceedings in case of, s. 31.
Issue of, ss. 13-18.	Costs—taxation of, ss. 32-49.
Penalties for not taking out, &c., ss. 19-21.	Judges may make rules, s. 50.
Yearly lists of practising attorneys, ss. 22, 23.	Jurisdiction of Courts not affected, s. 51.
Offences and penalties :—	
Attorneys in prison not to practise, s. 24.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

## ATTORNEYS TO BE ADMITTED AND ENROLLED.

Attorneys and solicitors must be admitted and enrolled.

1. Unless admitted and enrolled and duly qualified to act as an Attorney or Solicitor, no person shall act as an Attorney or Solicitor in any Superior or Inferior Court of Civil or Criminal Jurisdiction in Law or Equity, or before any Justice of the Peace, or as such sue out any writ or process, or commence, carry on, solicit or defend any action, suit or proceeding in the name of any other person, or in his own name. C. S. U. C. c. 35, s. 1.

## WHO MAY BE ADMITTED.

Who may be admitted and enrolled attorneys or solicitors. Rev. Stat. c. 138, ss. 39-42.

2. Subject to the provisions hereinafter contained and to any rules and regulations made by the Benchers of the Law Society of Upper Canada, under *The Act respecting the Law Society of Upper Canada*, the following persons, and no others, may be admitted and enrolled as Attorneys or Solicitors :—

1. Any person who has been bound by contract in writing to a practising Attorney or Solicitor in Ontario to serve and has served him as his clerk for five years; C. S. U. C. c. 35, s. 2 (1). Articled clerks after five years service.

2. Any person who has actually taken and had conferred upon him the degree of Bachelor or of Master of Arts, or of Bachelor or Doctor of Laws, in any of the Universities of the United Kingdom of Great Britain and Ireland or of this Province or the Province of Quebec having power to grant degrees, and has, after having taken and had conferred upon him such degree, been bound by contract in writing to a practising Attorney or Solicitor in Ontario to serve and has served him as his clerk for three years; 23 V. c. 48, s. 2. Graduates of Universities after three years' service

3. Any person who has been duly called to practise at the Bar of Ontario, or who has been duly called to practise at the Bar of any of Her Majesty's Superior Courts not having merely local jurisdiction in England, Scotland or Ireland, and has been bound by contract in writing to a practising Attorney or Solicitor in Ontario to serve and has served him as his clerk for three years; 28 V. c. 21, s. 1. Barristers of Ontario or England, Scotland or Ireland after three years' service.

4. Any person duly and lawfully sworn, admitted and enrolled a Solicitor of Her Majesty's Supreme Court of Judicature in England, or an Attorney or Solicitor of Her Majesty's High Court of Chancery, or Court of Queen's Bench, Common Pleas or Exchequer in Ireland, or who has been Writer to the Signet or Solicitor in the Supreme Courts in Scotland, and has been bound by contract in writing to a practising Attorney or Solicitor in Ontario to serve and has served him as his clerk for one year; C. S. U. C. c. 35, s. 2 (4); 40 V. c. 7, *Sched. A* (160). Solicitors of Courts of England, Scotland or Ireland after one year's service.

5. Any Attorney or Solicitor of any of Her Majesty's Superior Courts of Law or Equity in any of Her Majesty's Colonies wherein the Common Law of England is the Common Law of the land, and who has been bound by contract in writing to a practising Attorney or Solicitor in Ontario, to serve and has served him as his clerk for one year. C. S. U. C. c. 35, s. 2 (5). Attorneys and Solicitors of Courts in Colonies after one year's service.

6. Any person authorized to be admitted under section forty-two of *The Act respecting the Law Society of Upper Canada*. 39 V. c. 31, s. 9. Persons under Rev. Stat. c. 138, s. 42.

3. The Courts of Queen's Bench, Chancery and Common Pleas respectively may in their discretion admit as Attorneys or Solicitors of the said Courts respectively any persons who have been called to the degree of Barrister-at-Law under the provisions of subsection four of section one of *The Act respecting Barristers-at-Law*, on producing such evidence and testi- Barristers of Quebec who have been called to the Bar of Ontario. Rev. Stat. c. 139, s. 1 (1).

monials, and undergoing an examination in the Law of Ontario under the direction of the Law Society of Upper Canada to the satisfaction of such Courts respectively. C. S. C. c. 75, s. 2.

#### SERVICE OF ARTICLED CLERKS.

Articled clerks.

Rev. Stat. c. 136, ss. 36, 39-41.

4. The following enactments are made with respect to the service of articled clerks, subject to the powers of the Benchers of the Law Society of Upper Canada to make rules, regulations and by-laws, under *The Act respecting the Law Society of Upper Canada*.

Articled clerks of attorneys and solicitors to procure affidavits of the admission of attorney or solicitor, to whom articled and of execution of articles.

1. Whenever any person has been bound by contract, in writing, to serve as a clerk to an Attorney or Solicitor, such contract with the affidavit of execution thereof annexed thereto, shall within three months next after the execution of the contract be filed with one of the Clerks of the Crown and Pleas at Toronto, who shall endorse and sign upon such contract and affidavit a memorandum of the day of filing thereof, and every assignment of such contract, together with an affidavit of the execution thereof annexed thereto, shall be filed in like manner within the like period of three months next after the execution thereof. 28 V. c. 21, s. 8.

Provision in case affidavit not filed in three months.

2. In case such contract or assignment (as the case may be, with the affidavit of execution annexed thereto, is not filed within three months after the date of the contract or assignment, the same may nevertheless be filed with either of the officers before mentioned, but the service of the clerk shall be reckoned only from the date of such filing, unless the Law Society in its discretion for special reasons in any particular case otherwise orders. 28 V. c. 21, s. 9.

Practising attorneys and solicitors may have four articled clerks, and no more.

3. Every person authorized to practise as an Attorney or Solicitor may have under contract in writing four clerks at one time, and no more; and no Attorney or Solicitor shall have any clerk bound as aforesaid, after such Attorney or Solicitor has discontinued practising as, or carrying on the business of, an Attorney or Solicitor, nor whilst such Attorney or Solicitor is employed as a writer or clerk by any other Attorney or Solicitor; and the service by an articled clerk to an Attorney or Solicitor under any such circumstances, shall not be deemed good service under the articles. C. S. U. C. c. 35, s. 13.

Courts may order articles to be discharged or assigned in certain cases.

4. In case any Attorney or Solicitor, before the determination of the contract of a clerk bound to him as aforesaid, has become bankrupt, or taken the benefit of any Act for the relief of insolvent debtors, or having been imprisoned for debt has remained in prison for the space of twenty-one days, any of the said Courts of Law or Equity wherein such Attorney or Solicitor had been admitted to practise may, upon the application

of such clerk, order the said contract to be discharged or assigned to such person, upon such terms, and in such manner as the Court thinks fit. C. S. U. C. c. 35, s. 14.

5. If an Attorney or Solicitor, to whom a clerk has been so bound, dies before the expiration of the term for which the clerk became bound, or if he discontinues practice as an Attorney or Solicitor, or if the contract is by the consent of the parties cancelled, or in case such clerk is legally discharged before the expiration of such term by any rule or order of the Court wherein such Attorney or Solicitor has been admitted, such clerk may be bound by another contract in writing, to serve as clerk to any other practising Attorney or Solicitor during the residue of his said term; and in case an affidavit is duly made and filed of the execution of such last mentioned contract within the time and in the manner hereinbefore directed, and subject to the like regulations with respect to the original contract and the affidavit of its execution, due service under such second or subsequent contract shall be deemed sufficient. C. S. U. C. c. 35, s. 15.

Case of death of the attorney or solicitor, to whom clerk articulated provided for.

#### CONDITIONS OF ADMISSION AS ATTORNEY OR SOLICITOR.

5. Subject to any rules, regulations, and by-laws made by the Benchers of the Law Society of Upper Canada, under *The Act respecting the Law Society of Upper Canada*, no person above mentioned shall be admitted and enrolled as an Attorney or Solicitor unless:

Provisions to be complied with before admission. Rev. Stat. c. 138, ss. 39-42.

(a.) He has during the time specified in his contract of service duly served thereunder, and has during the whole of such term been actually employed in the proper practice or business of an Attorney or Solicitor by the Attorney or Solicitor to whom he has been bound at the place where such Attorney or Solicitor has continued to reside, during such term or (with his consent) by the professional agent of such Attorney or Solicitor in Toronto, for a part of the said term, not exceeding one year; nor unless

(b.) He has after the expiration of such term of service been examined and sworn in the manner hereinafter directed; nor unless

(c.) He has, at least fourteen days next before the first day of the term in which he seeks admission, left with the Secretary of the Law Society his contract of service, and any assignment thereof and affidavits of the execution of the same respectively, and his own affidavit of due service thereunder, and a certificate of the Attorney or Solicitor to whom he was bound, or his agent as aforesaid, of such due service, and (in the case of a person who has been called to the Bar or taken a degree as hereinbefore mentioned) a certificate of his having been



so called to the Bar or taken such degree or a duly authenticated certified copy of such certificate. C. S. U. C. c. 35, s. 3 (3); 28 V. c. 21, ss. 3, 5.

Form of affidavit to be delivered to the Society.

2. Such affidavits shall be in the form approved of by the Judges of the Court to which application for admission is made, and shall by the applicant be delivered to the Law Society upon his application to be examined. C. S. U. C. c. 35, s. 4.

Provision in case the contract, &c., cannot be produced.

3. In case the contract of service, assignment (if any), affidavits and certificate of due service, or any of them, cannot be produced, then, on application to be made to the Law Society, by a petition verified by affidavit, to be left with the Secretary of the Society, at least fourteen days next before the first day of the Term on which the applicant seeks admission, the Society on being satisfied of such fact may, in its discretion, dispense with the production of such contract, assignment affidavits and certificate of due service, or any of them, and may, notwithstanding such non-production, grant the certificates provided for in the ninth section of this Act. 28 V. c. 21, s. 6.

Time of clerk on militia service may be allowed.

4. The Benchers of the Law Society may allow any clerk under articles to a practising Attorney or Solicitor, as part of his term of service, all and every period of time that such clerk may be employed in the Militia Service when the Militia are called out for actual service. 29-30 V. c. 49, s. 7.

Oath to be taken by candidates for admission.

5. No candidate shall be admitted unless he makes and subscribes the oath or affirmation following :

"I, A. B., do swear (or solemnly affirm, *as the case may be*) that I will truly and honestly demean myself in the practice of an Attorney (or Solicitor, *as the case may be*) according to the best of my knowledge and ability ; So help me God."

C. S. U. C. c. 35, s. 6.

#### EXAMINATIONS.

Examinations of articled clerks.

Rev. Stat. c. 138, ss. 39-41.

6. Subject to any rules, regulations, and by-laws made by the Benchers of the Law Society of Upper Canada, under *The Act respecting the Law Society of Upper Canada*, the following enactments are made with respect to the examination of articled clerks and candidates for admission as Attorneys and Solicitors :

Preliminary examination for articled clerks.

1. The Benchers of the Law Society of Upper Canada may by regulation require that articled clerks shall pass a preliminary examination ; and the term of service under articles to entitle each articled clerk to be admitted as an Attorney shall date only from the passing of such examination. 35 V. c. 6, s. 5.

2. Notwithstanding anything in this Act contained, no persons being of either of the classes of persons mentioned in subsections one and two of section two of this Act shall be admitted or enrolled as an Attorney or Solicitor, unless he has at some time during the year next but two before the time of his final examination, and at some time not less than one year thereafter and during the year next but one before the time of his final examination, passed examinations to the satisfaction of the said Benchers. 31 V. c. 23, s. 1.

Persons mentioned in subsections 1 and 2 of sec. 2 of this Act to pass two examinations.

3. In case any person is prevented by illness or other unavoidable cause, from presenting himself for, or fails to pass either of the examinations by this section required, within the time specified, the said Benchers may, in their discretion, permit such person to pass such examination at other times: but not less than nine months shall elapse between the first and the second of such examinations, and not less than nine months shall elapse between the second of such examinations and the final examination. 31 V. c. 23, s. 6.

Provision in case of illness or inability from unavoidable causes.

7. Subject to such rules and regulations of the Law Society of Upper Canada, as aforesaid, no candidate for admission being of the class of persons respectively mentioned in subsections three, four and five of section two of this Act, shall be admitted unless

Provisions respecting candidates of the classes in subsections 3, 4, and 5 of section 2 *supra*.

1. He publishes in the *Ontario Gazette*, at least two months previously, notice of his intention to apply for admission to the Court of Chancery, Queen's Bench or Common Pleas (as the case may be) in the next ensuing Term of such Court;

2. Nor, (except in the case of a person called to the Bar of Ontario,) unless such candidate, at least fourteen days before the first day of such Term, leaves with the Secretary of the Law Society:

(a.) In the case of a Barrister not being a Barrister of Ontario—a certificate under the seal of the Society, or Inn of Court in England, Scotland or Ireland of which he is a member, duly attested under the proper hand of the proper officer thereof, that he has been duly called to the Bar, and was at the date of such certificate on the Books of such Society or Inn of Court; and also an affidavit of the applicant to the satisfaction of the Benchers of the Law Society, that since his admission to the Bar, no application to any Society or Inn of Court has been made against such person to disbar him or otherwise to disqualify him from further practice for misconduct in such his capacity of Barrister; C. S. U. C. c. 35, s. 7.

(b) And in the case of an Attorney or Solicitor,—a certificate

under the seal of the proper Court or Courts, duly attested under the hand of the proper officer thereof, that he was duly admitted and enrolled as such Attorney or Solicitor, and was at the date of such certificate on the Roll of Attorneys or Solicitors of such Court or Courts; and also, an affidavit of the applicant, that since his admission as aforesaid no application to any such Court or Courts (as the case may be) has been made against such person to strike him off the Roll of any such Court, or otherwise to disqualify him in the capacity of Attorney or Solicitor; C. S. U. C. c. 35, s. 7.

3. Such certificates respectively shall bear date within three months of the first day of the Term during which the application is made. C. S. U. C. c. 35, s. 7.

The Law Society to make rules for the examination of candidates.

8. The Benchers of the Law Society of Upper Canada with the approbation of the Visitors (including one at least of the Judges of each of the Superior Courts of Law and Equity), shall from time to time make such Rules as they consider necessary for conducting the examination of persons applying to be admitted as Attorneys or Solicitors, as well touching the articles and service, and the several certificates required by law to be produced by them before their admission, as touching the fitness and capacity of such persons to act as Attorneys or Solicitors; and the Society may from time to time nominate and appoint Examiners for conducting such examinations. C. S. U. C. c. 35, s. 8. *See also Rev. Stat. c. 138, s. 39.*

The Law Society to examine into the fitness and capacity of candidates for admission as attorneys or solicitors.

9. The Benchers of the Law Society, upon proof to their satisfaction of the requisites of this Act having been complied with, shall examine and enquire by such ways and means as they think proper, touching the fitness and capacity of any applicant for admission to act as an Attorney or Solicitor; and if satisfied by such examination, or by the certificate of the Examiners mentioned in section eight of this Act, that such person is duly qualified, fit and competent to act as an Attorney or Solicitor, the Society shall give a certificate under the corporate seal of the said Society of the due service under contract in writing, of such person, and of his fitness and capacity, and of his having duly complied with the requirements of this Act, and that he is in all respects duly qualified to be admitted as an Attorney and Solicitor. C. S. U. C. c. 35, s. 10, *first part.*

Admission.

10. Upon production to one of the Judges of the Superior Courts of Law or of Equity, annexed to such certificate of the original contract of service and any assignments thereof, and the affidavits of due service thereunder, and all other certificates hereinbefore required, such Judge shall endorse his fiat of admission upon the certificate of the Law Society: and thereupon any of the Superior Courts of Law or Equity

during the Term in which such application for admission is made, may, in addition to the oath of allegiance, administer to such person in open Court the oath hereinbefore directed to be taken by Attorneys and Solicitors, and after such oaths taken may cause him to be admitted and his name to be enrolled as an Attorney or Solicitor of such Court, which admission shall be signed by the Clerk or Registrar of the Court, and the documents upon which the admission has been obtained shall be filed and retained of record in the office of the Court in which the admission takes place. C. S. U. C. c. 35, s. 10, *last part*.

**11.** Every person duly admitted, sworn and enrolled as an Attorney or Solicitor of any one of the Courts of Queen's Bench, Common Pleas or Court of Chancery shall, upon production of his admission therein, or an official certificate of such admission, and that the same still continues in force, and upon signing the Roll of the other Court, be admitted an Attorney or Solicitor of either or both of the other Courts, and any such Attorney or Solicitor may practise in the Court of Appeal. C. S. U. C. c. 35, s. 20.

Attorneys of one Court to be admitted attorneys of other Courts.

#### FEES.

**12.** The following fees shall be payable to the Crown in stamps under this Act, subject to the provisions of *The Act respecting Law Stamps*, that is to say:

Fees payable under this Act.  
Rev. Stat. c. 21.

1. To Clerk of the Crown and Pleas—On filing Articles and Assignments (if any) and every affidavit of execution of such Articles, and making the endorsement required by this Act. \$0 50
2. To the Clerk of the Court whence Fiat issues—For Fiat for admission and oath, and on signing the Roll ..... 1 00
3. To the Clerk of the Court whence Fiat issues—For Certificate. 2 00
4. To the Clerk of the Court on admission upon Certificate of admission of any other Court—for signing the Roll and Certificate of admission. .... 2 00

C. S. U. C. c. 35, s. 26 ; 33 V. c. 9, s. 1.

#### ANNUAL CERTIFICATES.

**13.** The Clerks of the Crown and Pleas respectively, and the Registrar in Chancery, shall annually, during the Vacation after Trinity Term, deliver to the Secretary or at his office in Osgoode Hall, certified under their respective hands and the seals of the said Courts respectively, a copy of so much of the Roll of Attorneys and Solicitors of their respective Courts, as contains the names of those admitted to practise therein sub-

Copy to be delivered to Secretary in vacation after Trinity Term.



sequently to the last return by such Clerks or Registrar respectively made to the said Secretary. C. S. U. C. c. 35, s. 50.

Secretary to enter certified copies of Roll in a Book.

**14.** The Secretary shall enter all such certified copies in a book to be kept in his office for that purpose, affixing to each name a number following in consecutive order the numbers affixed to the names previously entered in such book. C. S. U. C. c. 35, s. 51.

Secretary to enter in Book alphabetical list of names on the Rolls, and annually on or before 1st February put up in his office, and in the office of Clerks of the Crown alphabetical list of certified Attorneys.

**15.** The Secretary shall, in another book to be kept in his office for that purpose, enter all the names contained in the copies of Rolls so transmitted to him, alphabetically arranged, with a reference to the numbers of each name on the Roll or Rolls on which the same stands; and shall, annually on or before the first day of February, put up in his office and also in the offices of each of the Clerks of the Crown and Pleas and Registrar in Chancery, an alphabetical list certified by him, under his hand, of all Attorneys and Solicitors who have taken out their certificates for the then current year, and shall from time to time, add to the list put up in his own office the name of each Attorney or Solicitor who takes out a certificate at a subsequent period of the year, noting thereon the time when such certificate was taken out. C. S. U. C. c. 35, s. 55.

Annual certificate to be obtained by them.

**16.** Each practising Attorney and Solicitor shall obtain from the Secretary of the Law Society, annually, before the last day of Michaelmas Term, a certificate under the seal of the said Society stating the Superior Courts in which he is a practising Attorney or Solicitor. 29-30 V. c. 49, s. 3; 39 V. c. 31, s. 3.

2. Such certificates shall be issued by the Secretary of the Law Society, under the seal of the said Society, according to the list of names appearing in the copy of the roll of Attorneys and Solicitors of the respective Courts, certified to the said Secretary by the Clerks of the Crown and Pleas and Registrar in Chancery under section thirteen of this Act. 39 V. c. 31, s. 3.

3. Upon the payment of all fees and dues payable by such Attorney or Solicitor to the said Society, the Secretary shall write his name on the margin thereof, with the date thereof, and such certificate shall be taken as issued only from such date. 29-30 V. c. 49, s. 3.

Fees.

4. The said Law Society shall determine what fees shall be payable for such certificates. 39 V. c. 31, s. 3.

Fees to be paid before certificate granted.

**17.** No such certificate shall be issued to any Attorney or Solicitor, who is indebted to the said Society, for any Term or other fee payable to the Society, nor until the annual fee for

each certificate prescribed by the rules of the said Society is paid. 29-30 V. c. 49, s. 4.

**18.** No Attorney or Solicitor, admitted as aforesaid, is required to take out any such certificate until the Michaelmas Term next following his admission. C. S. U. C. c. 35, s. 58.

Certificate need not be taken out till Michaelmas Term next after admission.

**19.** If any Attorney or Solicitor omits to take out such annual certificate in Michaelmas Term, he shall not be entitled thereto until he pays to the said Treasurer, not only the certificate fee, so appointed as aforesaid, together with any fees or dues which he owes to the said Society, but also an additional sum by way of penalty, in respect of each of such Courts, as follows :

Fine for neglect to take out certificate.

2. If such certificate is not taken out before the first day of Hilary Term, the further sum of two dollars : if not before the first day of Easter Term, the further sum of three dollars ; and, if not before the first day of Trinity Term, the further sum of four dollars. 29-30 V. c. 49, s. 5.

Amount of fine.

**20.** If any Attorney or Solicitor, or any member of any firm of Attorneys or Solicitors, either in his own name or in the name of any member of his firm, practises in any of the Courts of Queen's Bench, Chancery or Common Pleas, without such certificate being taken out by such Attorney or Solicitor, and by each member of his firm, he shall forfeit the sum of forty dollars, which forfeiture shall be paid to the Treasurer of the Law Society for the uses thereof, and may be recovered in any of the said Courts. 28 V. c. 21, s. 10.

Attorneys, etc. practising without certificate to forfeit \$40.

**21.** If any Attorney or Solicitor practises in any of the said Courts of Queen's Bench, Chancery or Common Pleas or in the County Courts respectively, without such certificate in each and any year of his practice he shall be liable to be suspended from practice for any such offence, in all of such Courts for a period of not less than three nor more than six months, and to continue so suspended until the fee upon his certificate for the year in which he so practised without certificate, is, together with a penalty of forty dollars, paid to the Treasurer of the Law Society, and the proceedings for such suspension may be taken in any of the said Superior Courts, and upon the rule being made absolute for such suspension in any of the said Superior Courts, such Attorney or Solicitor shall be suspended from practice in the other Courts in the same manner and for the same period, as if the rule had been made absolute also in each of the said other Courts. 29-30 V. c. 49, s. 6 ; 39 V. c. 31, s. 5.

Penalty for practising without certificate.

Suspension from practice.

**22.** Each of the Clerks and Deputy Clerks of the Crown and Pleas and the Registrar and Deputy Registrars of the Court

Clerks of Courts and Deputies at be-

ginning of each year, to make out list of attorneys, &c., who have practised during the previous year.

of Chancery, shall, at the commencement of each year, make out a list of the names of every Attorney and Solicitor who by the papers or proceedings filed or had in their respective offices appears to have practised as such Attorney or Solicitor at any time during the preceding year ending with the thirty-first day of December. C. S. U. C. c. 35, s. 59.

And deliver the same to the Secretary.

**23.** Such Clerks, Deputy Clerks, Registrar and Deputy Registrars respectively, shall, on or before the first day of Hilary Term in the year next to that for which they are made up, deliver or hand such lists to the Secretary at Osgoode Hall, certified under their respective hands and seals. C. S. U. C. c. 35, s. 60.

Attorneys and solicitors in prison not to practice.

**24.** In case an Attorney or Solicitor is a prisoner in any gaol or prison, he shall not during his confinement therein, or within the limits thereof, commence, prosecute or defend as such Attorney or Solicitor any action in any Court of Law or Equity, nor act in any matter in Bankruptcy or Insolvency; and any such Attorney or Solicitor so practising, and any Attorney or Solicitor permitting or empowering him so to practise in his name, shall be guilty of a contempt of the Court in which any such proceedings take place, and upon the application of any person complaining thereof shall be punishable by such Court accordingly; and such Attorney or Solicitor shall moreover be incapable of maintaining any action at Law or in Equity for the recovery of any fee, reward or disbursement for or in respect of any matter or thing done by him whilst such prisoner as aforesaid in his own name or in the name of any other Attorney or Solicitor. C. S. U. C. c. 35, s. 16.

Attorneys and solicitors not to act as agents of unqualified persons.

**25.** In case an Attorney or Solicitor wilfully and knowingly acts as the professional agent of any person not duly qualified to act as an Attorney or Solicitor, or suffers his name to be used in any such agency on account or for the profit of any unqualified person, or sends any process to such person, or does any other act to enable such person to practise in any respect as an Attorney or Solicitor, knowing him not to be duly qualified, and in case complaint is made thereof in a summary way to any of the Superior Courts wherein such Attorney or Solicitor has been admitted, and proof is made thereof upon oath to the satisfaction of the Court, the Attorney or Solicitor so offending may, in the discretion of the Court, be struck off the Roll and disabled from practising as such Attorney or Solicitor; and the Court may also commit such unqualified person so having practised as aforesaid to any Common Gaol or prison for any term not exceeding one year. C. S. U. C. c. 35, s. 17.

Superior Courts may strike attor-

**26.** Either of the Superior Courts of Law, or the Court of Chancery, may strike the name of any Attorney or Solicitor

off the Roll of Attorneys or Solicitors of the Court, for default by him in payment of moneys received by him as an Attorney or Solicitor. 37 V. c. 7, s. 89.

neys and solicitors off the Rolls.

**27.** In case any person, unless himself a plaintiff or defendant in the proceeding, commences, prosecutes or defends in his own name, or in that of any other person, any action or proceeding in any Court of Law or Equity, without being admitted and enrolled as aforesaid, he shall be incapable of recovering any fee, reward or disbursements on account thereof; and such offence shall be a contempt of the Court in which such proceeding has been commenced, carried on or defended, and punishable accordingly. C. S. U. C. c. 35, s. 18.

Penalty on Attorneys practising without being admitted.

**28.** No Attorney or Solicitor shall practise in any Court of Law or Equity in Ontario, either in his own name or by his partner, deputy or agent, or in the name of any other person, or otherwise, directly or indirectly while he holds, possesses, practises, carries on or conducts any of the offices of Registrar of the Court of Appeal, Clerk of the Crown and Pleas of the Courts of Queen's Bench or Common Pleas, or of Deputy Clerk of the Crown and Pleas of any County or Union of Counties, Registrar of the Court of Chancery, Clerk of a County Court, or Clerk of a Division Court, and every such person so practising, shall be subject to the forfeiture of such office, and shall, in addition thereto, be subject to a penalty of two thousand dollars, to be recovered in an action of debt in either of Her Majesty's Superior Courts of Common Law, to the use of Her Majesty; but nothing herein contained shall extend to any Local Master or Deputy Registrar of the Court of Chancery. C. S. U. C. c. 35, s. 21.

Practice prohibited while holding certain offices.

**29.** No Attorney or Solicitor shall practise in any of the Courts in Ontario during the time he is engaged in the business of a merchant, or connected by partnership, public or private, in purchasing or vending merchandise in the way of trade as a merchant, nor until twelve months after he has ceased to be such merchant or to be so engaged, or to be connected as aforesaid. C. S. U. C. c. 35, s. 22.

No attorney to practise while engaged as a merchant.

#### TIME LIMITED FOR STRIKING AN ATTORNEY OFF THE ROLL.

**30.** Except in case of fraud, no person admitted and enrolled shall be struck off the Roll on account of any defect in the articles of clerkship, or in the registry thereof, or in his service thereunder, or in his admission and enrolment, unless application for striking him off the Roll is made within twelve months next after his admission and enrolment. C. S. U. C. c. 35, s. 19.

Except in case of fraud, attorney not to be struck off Roll for defect in articles, unless application made in 12 months from admission.



## PROCEEDINGS IF STRUCK OFF THE ROLL.

When attorney or solicitor struck off roll, Clerk to certify same to Secretary.

**31.** Wherever any Attorney or Solicitor is struck off the Roll of any of the said Courts, the Clerk of the Crown or Registrar of such Court shall certify the same under his hand and the seal of the Court to the Secretary of the Law Society, stating whether such Attorney or Solicitor was struck off at his own request or otherwise, and the Secretary shall attach such certificate to the certified copy of the Roll on which the name of such person stands, and shall, in the book to be by him kept as aforesaid, make a note opposite the name of such person, of his having been struck off such Roll. C. S. U. C. c. 35, s. 52.

## ATTORNEYS' COSTS.

Attorneys to deliver their bill one month before bringing action for costs.

**32.** No suit at Law or in Equity shall be brought for the recovery of fees, charges or disbursements, for business done by any Attorney or Solicitor as such, until one month after a bill thereof, subscribed with the proper hand of such Attorney or Solicitor, his executor, administrator or assignee (or, in the case of a partnership, by one of the partners, either with his own name, or with the name or style of such partnership), has been delivered to the party to be charged therewith, or sent by the post to, or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, or been enclosed in or accompanied by a letter subscribed in like manner, referring to such bill. C. S. U. C. c. 35, s. 27.

Taxation of costs.

**33.** Upon the application of the party chargeable by such bill within such month any of the Superior Courts of Law or Equity or any Judge thereof, or any Judge of a County Court shall, without money being brought into Court, refer the bill and the demand thereon to be taxed by the proper officer of any of the Courts in the County in which any of the business charged for in such bill was done, and the Court or Judge making such reference shall restrain the bringing any suit for such demand pending the reference. 34 V. c. 12, s. 13.

Court or Judge may order bill to be referred on application of either party.

**34.** In case no application is made within the month, then the Court or Judge upon the application of either party may order a reference with such directions and conditions as he may deem proper; and may upon such terms as may be thought just restrain any suit for such demand pending the reference. C. S. U. C. c. 35, s. 29.

No reference to be made on application of party chargeable after verdict or after 12

**35.** No such reference shall be directed upon application made by the party chargeable with such bill after a verdict has been obtained or a writ of inquiry executed, or after twelve months from the time such bill was delivered, sent or left as aforesaid, except under special circumstances, to be proved to

the satisfaction of the Court or Judge to whom the application for the reference is made. C. S. U. C. c. 35, s. 30.

months from  
delivery of  
bill.

**36.** In case either party to any such reference, having due notice, refuses or neglects to attend the taxation, the officer to whom the reference is made may tax the bill *ex parte*; and in case the reference is made upon the application of either party and the party chargeable with the bill attends the taxation, the costs of the reference shall be paid according to the event of the taxation, except that if a sixth part is taxed off, the costs shall be paid by the party by whom or on whose behalf such bill was delivered; and if less than a sixth part is taxed off, then by the party chargeable with such bill, if he applied for or attended the taxation. C. S. U. C. c. 35, s. 31.

If parties re-  
fuse to attend,  
officer may  
tax bill  
*ex parte*.

**37.** Every order for such reference shall direct the officer to whom the reference is made, to tax the costs of the reference, and to certify what, upon the reference, he finds to be due to or from either party in respect of such bill and of the costs of the reference, if payable. C. S. U. C. c. 35, s. 32.

Order of refer-  
ence to direct  
officer to tax  
costs of refer-  
ence and to  
certify what  
he finds due on  
taxation.

**38.** Such officer may certify specially any circumstances relating to such bill or taxation, and the Court or Judge may thereupon make such order as may be deemed right respecting the payment of the costs of the taxation. C. S. U. C. c. 35, s. 33.

Officer may  
make special  
certificate, and  
Court or Judge  
may direct  
payment of  
costs of tax-  
ation.

**39.** In case such reference is made when the same is not authorized, except under special circumstances as hereinbefore provided, the Court or Judge, in making the same, may give any special directions relative to the costs of the reference. C. S. U. C. c. 35, s. 34.

Court or Judge  
may give spe-  
cial directions  
relative to  
costs of refer-  
ence.

**40.** Where no bill has been delivered, sent or left as aforesaid, and where such bill if delivered, sent or left, might have been referred as aforesaid, any such Court or Judge may order the delivery of a bill, and may also order the delivery up of deeds or papers in the possession, custody or power of the Attorney or Solicitor, his assignee or representatives, in the same manner as has heretofore been done in cases where any such business had been transacted in the Court in which such Order was made. C. S. U. C. c. 35, s. 35.

Where no bill  
delivered, or  
where bill, if  
delivered,  
might have  
been referred,  
Court or  
Judge may  
order delivery  
up of papers.

**41.** In proving a compliance with this Act it shall not be necessary in the first instance to prove the contents of the bill delivered, sent or left, but it shall be sufficient to prove that a bill of fees, charges or disbursements subscribed in the manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent or left in manner aforesaid; but the other party may shew that the bill so delivered, sent or

Not necessary  
in first in-  
stance in  
action on bill  
to prove con-  
tents of bill  
delivered.

left, was not such a bill as constituted a *bona fide* compliance with this Act. C. S. U. C. c. 35, s. 36.

The Judges may allow actions for costs within one month if departure from Ontario be approved.

**42.** Any Judge of the Superior Courts of Law or Equity, or a County Judge, on proof to his satisfaction that there is probable cause for believing that the party chargeable is about to quit Ontario, may authorize an Attorney or Solicitor to commence an action for the recovery of his fees, charges or disbursements against the party chargeable therewith, although one month has not expired since the delivery of a bill as aforesaid. C. S. U. C. c. 35, s. 37.

Where a party not being the principal pays a bill of costs, a taxation may be allowed afterwards.

**43.** Where any person not being chargeable as the principal party is liable to pay or has paid any bill either to the Attorney or Solicitor, his assignee, or representative, or to the principal party entitled thereto, the party so paying, his assignee or representative, may make the like application for a reference thereof to taxation and in like manner as the party chargeable therewith might himself have made, and the same proceedings shall be had thereupon, as if such application had been made by the party so chargeable. C. S. U. C. c. 35, s. 38.

When special circumstances may be considered.

**44.** In case such application is made when, under the provisions hereinbefore contained a reference is not authorized to be made except under special circumstances, the Court or Judge to whom the application is made, may take into consideration any additional special circumstances applicable to the person making it, although such circumstances might not be applicable to the party chargeable with the bill, if he was the party making the application. C. S. U. C. c. 35, s. 39.

Court or Judge may order the delivery of a copy of the bill.

**45.** For the purpose of any such reference upon the application of the person not being the party chargeable, or of a party interested as aforesaid, such Court or Judge may order the Attorney or Solicitor, his assignee or representative, to deliver to the party making the application a copy of the bill, upon payment of the costs of the copy. C. S. U. C. c. 35, s. 40.

When a bill taxed may be re-taxed.

**46.** No bill previously taxed shall be again referred, unless under the special circumstances of the case the Court or Judge to whom the application is made thinks fit to direct a re-taxation thereof. C. S. U. C. c. 35, s. 41.

Payment not to preclude taxation if applied for within a year.

**47.** The payment of any such bill as aforesaid shall in no case preclude the Court or Judge to whom application is made from referring such bill for taxation, if the application is made within twelve months after payment, and if the special circumstances of the case in the opinion of such Court or Judge appear to require the same, upon such terms and subject to such directions as to the Court or Judge seem right. C. S. U. C. c. 35, s. 42.

**48.** In all cases in which a bill is referred to be taxed, the officer to whom the reference is made, may request the proper officer of any other Court, to assist him in taxing any part of such bill, and such officer, so requested, shall thereupon tax the same, and shall have the same powers, and may receive the same fees in respect thereof, as upon a reference to him by the Court of which he is such officer, and he shall return the bill, with his opinion thereon, to the officer who so requests him to tax the same. C. S. U. C. c. 35, s. 43.

A taxing officer may require the assistance of the officer of any other Court.

**49.** All applications made to refer any bill to be taxed, or for the delivery of a bill, or for the delivering up of deeds, documents and papers, shall be made "*In the matter of (such Attorney or Solicitor);*" and upon the taxation of any such bill, the certificate of the officer by whom the bill is taxed shall (unless set aside or altered by order of a Judge, or by decree or rule of Court,) be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed to be paid may be enforced according to the practice of the Court in which the reference has been made. C. S. U. C. c. 35, s. 44.

How applications against attorneys to be entitled.

#### JUDGES MAY MAKE RULES.

**50.** The Judges of the Courts of Queen's Bench, Common Pleas and Chancery may, from time to time, make such Rules or Regulations, other than the Rules or Regulations hereinbefore referred to, as to them seem necessary and meet for carrying out the provisions of this Act. C. S. U. C. c. 35 s. 25.

Judges of Superior Courts to make rules, etc.

#### PRESENT PRACTICE AS TO ADMISSIONS NOT ALTERED.

**51.** Nothing in this Act contained shall interfere with the present practice of the said Courts as to the admission of Attorneys or Solicitors, nor with their jurisdiction over them as officers of the said Courts. 39 V. c. 31, s. 6.

Act not to affect practice of Courts as to admission.



## CHAPTER 141.

## An Act respecting Notaries Public.

Appointment, s. 1.

Powers, s. 2.

Examination of candidates, s. 3.

Certificate of fitness, s. 3 (1).

Regulations, s. 3 (2).

Fee to examiner, s. 3 (2).

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

The Lieutenant-Governor may appoint Notaries

1. It shall be lawful for the Lieutenant-Governor, to appoint from time to time as he thinks fit under his hand and seal at arms, one or more Notaries Public for this Province. 33 V. c. 6, s. 1.

Powers of Notaries.

2. Every such Notary shall have, use and exercise the power of drawing, passing, keeping and issuing all deeds and contracts, charter-parties and other mercantile transactions in this Province, and also of attesting all commercial instruments that may be brought before him for public protestation, and otherwise of acting as usual in the office of Notary, and may demand, receive and have all the rights, profits and emoluments rightfully appertaining and belonging to the said calling of Notary Public during pleasure. 33 V. c. 6, s. 2.

Examination as to qualification of persons desirous of being appointed Notaries Public.

3. Persons other than Barristers and Attorneys duly admitted as such in this Province, desirous of being appointed as Notaries Public, shall be subject to examination in regard to their qualification for the said office, by the County Court Judge of the County in which such persons reside, or by such other person as may from time to time be appointed in that behalf by the Lieutenant-Governor; and no person shall be appointed a Notary Public without a certificate from said County Court Judge, or such other person, that he has examined the applicant and finds him qualified for the office, and that he is of opinion that a Notary Public is needed for the public convenience in the place where such applicant resides and intends to carry on business.

Regulations.

2. The Lieutenant-Governor in Council, may from time to time make regulations for such examination and certificate; and the Judge or other person examining shall be entitled to receive from the person examined a fee of five dollars for every examination. 40 V. c. 8, s. 26.

Fee to Examiner.

## 7. *Medical Profession.*

---

CHAP. 142. Medicine and Surgery, p. 1243.

“ 143. Anatomy, p. 1258.

“ 144. Dentistry, p. 1261.

“ 145. Pharmacy, p. 1266.

---

## CHAPTER 142.

### An Act respecting the Profession of Medicine and Surgery.

---

Short title, s. 1.

College of Physicians and Surgeons continued, s. 2.

Who shall be members of, ss. 3, 4.

Council of, ss. 5-7.

Voters at elections to the Council, ss. 8, 9.

Disputed elections, s. 10.

Meetings—procedure at, s. 11.

Payment of members, s. 12.

Appointment of officers, &c., ss. 13, 14.

Division Associations, s. 15.

Fixing tariff of fees, s. 16.

Medical education, ss. 17-20.

Registration of qualified practitioners, ss. 21-36.

Examination of candidates, ss. 28-31.

Registration of higher degrees obtained by persons already registered, ss. 32, 33.

Erasing from register practitioners guilty of felony, s. 34.

Rights of registered practitioners, s. 35.

Publication of register, s. 36.

Offences and penalties :—

Omitting to register, s. 37.

Falsification by Registrar, s. 38.

Procuring fraudulent registration, s. 39.

Pretending to be, or practising without being, registered, s. 40.

Falsely pretending to be a Physician, s. 41.

Falsely using a title implying registration, s. 42.

Unregistered persons not entitled to recover charges, s. 43.

Unregistered persons disqualified from receiving certain appointments, s. 44.

Certificates of such persons, invalid, s. 45.

Prosecutions, ss. 46-8.

Evidence of registration, ss. 49, 50.

Limitation of prosecutions, s. 51.

Stay of proceedings by Council, s. 52.

Application of penalties, s. 53.

“ “ Council funds, s. 54.

Meaning of “ legally qualified practitioner,” &c., s. 55.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

1. This Act may be cited as "*The Ontario Medical Act.*"

College of Physicians and Surgeons incorporated.

2. The medical profession of Ontario heretofore incorporated under the name and style of "The College of Physicians and Surgeons of Ontario," shall be deemed to be and to have been from the date of its first establishment a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of chattel property and real estate for the purposes of this Act, and to sue and be sued in the manner usual with such corporations. 37 V. c. 30, s. 6, *part.*

Members thereof under former Acts. 29 V. c. 34. 32 V. c. 45. 37 V. c. 30.

3. Every person registered according to the provisions of the Act passed in the twenty-ninth year of the reign of Her Majesty, and chaptered thirty-four, of the Act passed in the thirty-second year of the reign of Her said Majesty, and chaptered forty-five, of the Act passed in the thirty-seventh year of Her Majesty's reign and chaptered thirty, and of the Acts amending the same, shall be a member of the said College of Physicians and Surgeons of Ontario. 37 V. c. 30, s. 6, *part.*

Under this Act.

4. Every person hereafter registered under the provisions of this Act shall also be a member of the said College. 37 V. c. 30, s. 6, *part.*

Council of the College of Physicians and Surgeons.

5. There shall be a Council of the said College of Physicians and Surgeons of Ontario to be appointed in the manner herein after provided for in this Act, and referred to in this Act as "The Council." 37 V. c. 30, s. 7.

How composed.

6. The Council shall be composed of the following persons :—

Representatives of certain Colleges.

*Firstly.* One member to be chosen from each of the Colleges and bodies hereinafter designated, to wit: The University of Toronto, Queen's University and College of Kingston, University of Victoria College, University of Trinity College, Royal College of Physicians and Surgeons, Kingston, Toronto School of Medicine, Trinity Medical School, and of every other College or body in the Province now by law authorized or which may be hereafter authorized to establish a medical faculty in connection therewith, and to grant degrees in Medicine and Surgery or other certificates of qualification to practise the same.

No teacher, etc., in College to be a member

2. No teacher, professor or lecturer of any of the before-mentioned Colleges or bodies shall hold a seat in the Council

except as a representative of the College or body to which he belongs:

except as representative of his College

3. All members of the Council, representing the Colleges or bodies aforesaid, shall be practitioners duly registered under this Act or the Acts mentioned in section three of this Act.

Members of the Council to be registered practitioners.

*Secondly.* Five members to be duly elected by the licensed practitioners in Homeopathy who have been registered under this Act, or under the provisions in that behalf of any of the Acts mentioned in section three of this Act; and the five representatives of the Eclectic system in the said Council on the twenty-fourth day of March, 1874, shall be continued as such representatives for a period of five years from the said date, when such representatives in the Council shall cease and determine; and if any vacancy occurs during the said period, such vacancy may be filled as hereinafter mentioned;

Representatives of Homeopathy.

Eclectics.

*Thirdly.* Twelve members to be elected in the manner hereinafter provided from amongst and by the registered members of the profession other than those mentioned in the preceding subsections of this section.

Elected members.

2. The twelve members to be elected as aforesaid shall be residents of the several territorial divisions for which they are elected; and one member shall be so elected from each of the territorial divisions mentioned in Schedule A. to this Act annexed, by the registered practitioners of Medicine resident in such division; and the manner of holding such election shall, with respect to the time thereof and the taking the votes therefor, be determined by a by-law to be passed by the Council; and in default of such by-law being made, then the Lieutenant-Governor shall prescribe the time and manner of holding such election. 37 V. c. 30, ss. 8, 9 & 10; 40 V. c. 65, s. 10.

Elections, how to be conducted.

7. The members of the Council shall be elected or appointed, as the case may be, for a period of five years; but any member may resign his appointment at any time by letter addressed to the President or Registrar of the Council; and upon the death or resignation of any member of the Council, it shall be the duty of the Registrar forthwith to notify the College or body wherein such vacancy has occurred, of such death or resignation; and such College or body shall have the power to nominate another duly qualified person to fill such vacancy; or, if the vacancy be caused by the death or resignation of any member elected from a territorial division, the Registrar shall forthwith cause a new election to be held in such territorial division in such manner as may be provided for by by-law of the Council; and such election shall be conducted in accordance with the by-laws and regulations of the Council, but it shall be lawful for the Council during such vacancy to exercise the powers hereinafter mentioned. 37 V. c. 30, s. 11 (1).

Membership for five years.

Death or resignation provided for.



Vacancies in  
Homœopathic  
or Eclectic  
members of  
the Council.

2. In the event of the death or resignation of any member of the Council representing the practitioners of the Homœopathic or Eclectic systems of Medicine respectively, it shall be lawful for the remaining representatives of Homœopathy or the Eclectic system respectively in the Council to fill such vacancy by selecting from amongst the duly registered practitioners in Homœopathy or the Eclectic system respectively a person to fill the said vacancy, caused either by death or resignation. 37 V. c. 30, s. 11 (1).

Persons enti-  
tled to vote.

8. The persons entitled to vote under this Act at any election shall be all duly registered practitioners. 37 V. c. 30, s. 14.

Transfer to  
different  
voters' list.

9. Any member of the College of Physicians and Surgeons of Ontario, may have his name transferred from one class of voters to any other class on his presenting to the Registrar a certificate duly signed by such member or members of the Board of Examiners appointed by the Council to examine candidates on the subjects specified in this Act, as peculiar to each School of Medicine, testifying that the member so applying to have his name so transferred has shown a sufficient knowledge of the system of Medicine he desires to connect himself with, to entitle him to be admitted to the class he desires, and being so admitted he shall be entitled to vote in that class only.

2. No member shall be entitled to return to the class from which he has been so transferred without the sanction of the Council; but no member shall at any time be entitled to vote in more than one class of the voters who, in accordance with the provisions of this Act, vote in the election of the members of the Council; and there shall be payable to the Registrar for such transfer the same charge as is usual for the registration of an additional qualification, namely two dollars, 37 V. c. 30, s. 14.

Disputed elec-  
tions, how  
dealt with.

10. In case of any doubt or dispute as to the legality of the election of any member of the Council, it shall be lawful for the Council to hold an inquiry and decide who is the legally elected member of the Council; and the person whom they decide to have been elected shall be and be deemed to be the member legally elected; and if such election is found to have been illegal the Council shall have power to order a new election. 37 V. c. 30 s. 12 (3).

The first meet-  
ing of the  
Council.

11. The said elected members of the Council, shall together with the members to be appointed by the several Colleges and bodies as mentioned in section six of this Act, hold their first meeting at such time and place as may be fixed by by-law of the Council; and shall make such rules and regulations as to the times and places of subsequent meetings of the Council, and the mode of summoning the same, as to them seems expedient; which rules and regulations shall remain in force

till altered at any subsequent meeting; and in the absence of any rule or regulation as to the summoning of future meetings of the Council it shall be lawful for the President thereof or, in the event of his absence or death, for the Registrar to summon the same at such time and place as to him seems fit, by circular letter to be mailed to each member. 37 V. c. 30, ss. 13 & 15. <sup>Future meetings.</sup>

2. At least two weeks' notice of such meeting shall be given; and in the event of the absence of the President from any meeting, the Vice-President or, in his absence, some other member to be chosen from among the members present shall act as President. <sup>President.</sup>

3. All the acts of the Council shall be decided by the majority of the members present, not being less than nine in number. <sup>Majority.</sup>

4. At all meetings the President for the time being shall have a casting vote only. 37 V. c. 30, s. 15. <sup>Voting.</sup>

12. There shall be paid to the members of the Council such fees for attendance, and such reasonable travelling expenses, as may from time to time be fixed by by-law passed by the said Council. 37 V. c. 30, s. 16. <sup>Payment to members of the Council.</sup>

13. The Council shall annually appoint a President, Vice-President, Registrar, Treasurer, and such other officers as may from time to time be necessary for the working of this Act, who shall hold office during the pleasure of the Council; and the said Council shall have power to fix by by-law, or from time to time, the salaries or fees to be paid to such officers, and to the board of examiners hereinafter appointed. 37 V. c. 30, s. 17 (1). <sup>Appointment of officers.</sup> <sup>Salaries.</sup>

14. The Council shall appoint annually from among its members an "Executive Committee," to take cognizance of and action upon all such matters as may be delegated to it by the Council or such as may require immediate interference or attention between the adjournment of the Council and its next meeting; and all such acts shall be valid only till the next ensuing meeting of the Council: but such Committee shall have no power to alter, repeal or suspend any by-law of the Council. 37 V. c. 30, s. 17 (2). <sup>Executive Committee.</sup>

#### DIVISION ASSOCIATIONS.

15. In each of the territorial divisions described in Schedule A of this Act there may be established a "Territorial Division Medical Association," which may be called "The Division Association" of such division; every member of the College of Physicians and Surgeons of Ontario, resident within the said terri- <sup>Territorial division medical associations.</sup>

torial division, shall be a member; and the representative in the Council shall be *ex officio* chairman of such Division Association. 37 V. c. 30, s. 18 (1).

Tariff of fees. **16.** The said Division Association may from time to time submit to the Council a tariff or tariffs of professional fees, suitable to their division, or to separate portions of their division; and upon the said tariff or tariffs of fees receiving the approval of the Council, signified by the seal of the College and by the signature of the President thereof, being appended thereto, such tariff or tariffs shall be held to be a scale of reasonable charges within the meaning of section thirty-five of this Act for the division or section of a division where the member making the charge resides. 37 V. c. 30, s. 18 (2).

#### MEDICAL EDUCATION.

Matriculation examiners. **17.** The Council shall have power and authority to appoint an examiner or examiners for the admission of all students to the matriculation or preliminary examination, and to make by-laws and regulations for determining the admission and enrolment of students: but any change in the curriculum of studies fixed by the Council shall not come into effect until one year after such change is made.

Homœopath-  
ists.

2. Until a Homœopathic Medical College for teaching purposes is established in Ontario, candidates wishing to be registered as Homœopathists shall pass the matriculation examination established by this Act, as the preliminary examination for all students in Medicine, and shall present evidence of having spent the full period of study required by the curriculum of the Council, under the supervision of a duly registered Homœopathic practitioner.

3. For a period of four years from the twenty-fourth day of March, 1874, such Homœopathic students may pass their matriculation examination at any time prior to the passing of their professional examination.

4. Such candidates must also have complied with the full curriculum of studies, prescribed from time to time by the Council for all medical students, but the full time of attendance upon lectures and hospitals required by the curriculum of the Council may be spent in such Homœopathic Medical Colleges in the United States or Europe as may be recognized by a majority of the Homœopathic members of the Council: but in all Homœopathic Colleges, where the winter course of lectures is only of four months' duration, certified tickets of attendance on one such course shall be held to be equivalent to two-thirds of one six months' course, as required by the Council; and when such teaching body has been established in Ontario, it shall be

optional for such candidates to pursue in part or in full the required curriculum in Ontario. 37 V. c. 30, s. 32 (1-2).

**18.** The Council shall from time to time, as it may deem expedient, enact by-laws as to the terms upon which it will receive the matriculation and other certificates of Colleges and other institutions not in the Province of Ontario. 37 V. c. 30, s. 32 (3). Council to make by-laws.

**19.** Any graduate or any student having matriculated in any University in Her Majesty's dominions, shall not be required to pass the preliminary examination. 37 V. c. 30, s. 32 (4). Graduates and matriculants of universities in Her Majesty's dominions

**20.** The Council shall have power and authority to fix and determine from time to time a curriculum of studies to be pursued by the students, and such curriculum of studies shall be observed and taught by all Colleges referred to in section six of this Act. 37 V. c. 30, s. 33. Curriculum of studies.

#### MEDICAL REGISTRATION.

**21.** The Council shall cause to be kept by an officer appointed by them, and to be called the Registrar, a book or register, in which shall be entered the name of every person registered according to the provisions of this Act or the Acts mentioned in the third section of this Act; and from time to time the names of all persons who have complied with the enactments hereinafter contained, and with the rules and regulations made or to be made by the Council respecting the qualifications to be required from practitioners of Medicine, Surgery and Midwifery in this Province; and those persons only whose names are inscribed in the book or register above mentioned, shall be deemed to be qualified and licensed to practise Medicine, Surgery or Midwifery in this Province, except as hereinafter provided; and such book or register shall at all times be open, and subject to inspection by any duly registered practitioner in Ontario, or by any other person. 37 V. c. 30, s. 19. Registration.  
Inspection of register.

**22.** It shall be the duty of the Registrar to keep his register correct, in accordance with the provisions of this Act, and the rules, orders and regulations of the Council, and he shall from time to time make the necessary alterations in the addresses or qualifications of the persons registered under this Act; and the said Registrar shall perform such other duties as may be imposed upon him by the Council. 37 V. c. 30, s. 20. Duty of Registrar.

**23.** It shall be optional for the Council to admit to registration such persons as are duly registered in the medical register of Great Britain, or are otherwise authorized to practice Medicine, Surgery and Midwifery in the United Kingdom of Great Britain and Ireland. As to registration of persons from Great Britain and Ireland.



Britain and Ireland, upon such terms as the Council may deem expedient. 37 V. c. 30, s. 22 (1).

Person in  
practice before  
1850.

2. Any person who was actually practising Medicine, Surgery or Midwifery, or any of them in Ontario, prior to the first of January, one thousand eight hundred and fifty, and who has attended one course of lectures at any recognized medical school, shall, upon such proof as the Council may require, be entitled to registration under this Act. 37 V. c. 30, s. 22 (2).

Homœopath  
in practice  
before 1850.

3. Any person who was actually practising Medicine, Surgery or Midwifery according to the principles of Homœopathy or the Eclectic system of Medicine, before the first day of January, one thousand eight hundred and fifty, and for the six years preceding the twenty-fourth day of March, one thousand eight hundred and seventy-four, in Ontario, may in the discretion of the representatives of the Homœopathic or Eclectic system of Medicine respectively be admitted to registration under this Act. 37 V. c. 30, s. 22, (3).

Qualification  
for, and mode  
of registry.

24. Every person who possesses any one or more of the qualifications described in Schedule B to this Act, dated prior to the twenty-third day of July, one thousand eight hundred and seventy, shall, on payment of a fee to be fixed by by-law of the Council, not exceeding ten dollars, be entitled to be registered, on producing to the Registrar the document conferring or evidencing the qualification or each of the qualifications in respect whereof he seeks to be so registered, or upon transmitting by post to the Registrar information of his name and address, and evidence of the qualification or qualifications in respect whereof he seeks to be registered, and of the time or times at which the same was or were respectively attained: but no one registered under the Acts mentioned in the third section of this Act shall be liable to pay any fee for being registered under this Act. 37 V. c. 30, s. 21.

Examination  
before regis-  
tration, when  
necessary.

25. Every person desirous of being registered under the provisions of this Act, and who had not become possessed of any one of the qualifications in the said Schedule B mentioned, before the twenty-third day of July, one thousand eight hundred and seventy, shall, before being entitled to registration, present himself for examination as to his knowledge and skill for the efficient practice of his profession, before the Board of Examiners, in the twenty-eighth section mentioned; and upon passing the examination required, and proving to the satisfaction of the Board of Examiners that he has complied with the rules and regulations made by the Council, and on the payment of such fees as the Council may by general by-law establish, such person shall be entitled to be registered, and, in virtue of such registration, to practise Medicine, Surgery and Midwifery in this Province. 37 V. c. 30, s. 22 (1).

**26.** When and as soon as it appears that there has been established a "Central Examining Board," similar to that constituted by this Act, or an institution duly recognized by the Legislature of any of the Provinces forming the Dominion of Canada, other than Ontario, as the sole examining body for the purpose of granting certificates of qualification, and wherein the curriculum is equal to that established in Ontario, the holder of any such certificate shall upon due proof be entitled to registration by the Council of Ontario, if the same privilege is accorded by such Examining Board or Institution to those holding certificates in Ontario. 37 V. c. 30, s. 22 (1).

Registration  
of persons  
from other  
Provinces of  
the Dominion.

**27.** Each member of the College shall pay to the Registrar or to any person deputed by the Registrar to receive it, such annual fee as may be determined by by-law of the Council not less than one nor more than two dollars, towards the general expenses of the College, which last mentioned fee shall be payable on the first day of January in the year in which the same is imposed; and such fee shall be deemed to be a debt due by the member to the College, and be recoverable with costs of suit in the name of the College of Physicians and Surgeons of Ontario, in the Division Court where the member resides. 37 V. c. 30, s. 22 (4).

Annual  
assessment.

**28.** At the annual meeting of the Council in each year, there shall be elected by the members of the said Council a "Board of Examiners," whose duty it shall be at least once in each year to examine all candidates for registration in accordance with the by-laws, rules and regulations of the Council; such examinations to be held at Toronto or Kingston at such times and in such manner as the Council may by by-law direct. 37 V. c. 30, s. 23.

Board of  
Examiners.

**29.** The Board of Examiners appointed under the preceding section shall be composed as follows:—one member from each of the teaching bodies now existing, referred to in the sixth section of this Act, and one from every other School of Medicine which may be hereafter organized in connection with any University or College which is empowered by law to grant medical or surgical diplomas; and a number not exceeding five members to be chosen from among those members of the College of Physicians and Surgeons of Ontario, who are unconnected with any of the above teaching bodies. 37 V. c. 30, s. 24, *first part*. See 40 V. c. 65, s. 10.

Examiners  
how appoint-  
ed.

**30.** Every candidate who, at the time of his examination, signifies his wish to be registered as a Homeopathic or Eclectic practitioner, shall not be required to pass an examination in either Materia Medica, or Therapeutics, or in the Theory or Practice of Physic, or in Surgery or Midwifery, except the operative practical parts thereof, before any examiners other than those approved of by the representatives in the Council of the body to which he signifies his wish to belong. 37 V. c. 30, s. 24, *last part*.

Examinations  
of Homoeo-  
paths.

Power of Council to make rules, etc.

**31.** The Council shall from time to time as occasion may require, make orders, regulations, or by-laws for regulating the registers to be kept under this Act, and the fees to be paid for registration, and shall from time to time make rules and regulations for the guidance of the Board of Examiners, and may prescribe the subjects and modes of the examinations, the time and place of holding the same, and generally may make all such rules and regulations in respect of such examinations not contrary to the provisions of this Act, as they may deem expedient and necessary. 37 V. c. 30, s. 25.

Additional qualification or degree.

**32.** Every person registered under this Act who obtains any higher degree or any qualification other than the qualification in respect of which he has been registered, shall be entitled to have such higher degree or additional qualification inserted in the register in substitution for, or in addition to, the qualification previously registered on the payment of such fees as the Council may appoint. 37 V. c. 30, s. 28.

Registrar to be satisfied as to qualification.

**33.** No qualification shall be entered on the register either on the first registration or by way of addition to a registered name unless the Registrar is satisfied by proper evidence that the person claiming is entitled to it; and any appeal from the decision of the Registrar may be decided by the Council; and any entry proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased from the register by an order in writing of the Council.

Appeal to the Council.

2. In the event of the Registrar being dissatisfied with the evidence adduced by the person claiming to be registered, he shall have the power, subject to an appeal to the Council, of refusing the said registration until the person claiming to be registered has furnished such evidence duly attested by oath or affirmation, before the Judge of the County Court of any County. 37 V. c. 30, s. 29.

Registered practitioner guilty of felony.

**34.** Any registered medical practitioner who has been convicted of any felony in any Court shall thereby forfeit his right to registration, and by the direction of the Council his name shall be erased from the register; or in case a person known to have been convicted of felony presents himself for registration, the Registrar shall have power to refuse such registration. 37 V. c. 30, s. 34.

#### *Rights of Registered Practitioners.*

Rights of registered persons.

**35.** Every person registered under the provisions of this Act, shall be entitled according to his qualification or qualifications to practise Medicine, Surgery or Midwifery, or any of them as the case may be, in the Province of Ontario, and to demand and recover in any Court of Law, with full costs of

suit, reasonable charges for professional aid, advice and visits and the cost of any medicine or other medical or surgical appliances rendered or supplied by him to his patients. 37 V. c. 30, s. 30.

### *Publication of Register.*

**36.** The Registrar of the Council shall from time to time under the direction of the Council cause to be printed and published a correct register of the names in alphabetical order according to the surnames, with the respective residences in the form set forth in Schedule C to this Act, or to the like effect, together with the medical titles, diplomas and qualifications conferred by any College or body with the dates thereof, of all persons appearing on the register as existing on the day of publication; and such register shall be called "The Ontario Medical Register;" and a copy of such register for the time being purporting to be so printed and published as aforesaid, shall be *prima facie* evidence in all Courts, and before all Justices of the Peace, and others, that the persons therein specified are registered according to the provisions of this Act, and, subject to the provisions of subsection two of this section, the absence of the name of any person from such copy shall be *prima facie* evidence that such person is not registered according to the provisions of this Act.

Register to be printed and published.

Register to be *prima facie* evidence in all Courts.

2. In the case of any person whose name does not appear in such copy, a certified copy under the hand of the Registrar of the Council, of the entry of the name of such person on the register, shall be evidence that such person is registered under the provisions of this Act. 37 V. c. 30, s. 31.

### OFFENCES AND PENALTIES.

**37.** Any person entitled to be registered under this Act, but who neglects or omits to be so registered, shall not be entitled to any of the rights or privileges conferred by registration under the provisions of this Act, so long as such neglect or omission continues, and he shall be liable to all the penalties imposed by this Act, or by any other Act in force against unqualified or unregistered practitioners. 37 V. c. 30, s. 26.

Those entitled to register, and neglecting to do so.

**38.** If the Registrar makes or causes to be made any wilful falsification in any matter relating to the register, he shall incur a penalty of fifty dollars, and shall be disqualified from again holding that position. 37 V. c. 30, s. 27.

Penalty on Registrar for falsification.

**39.** If any person procures or causes to be procured his registration under this Act by means of any false or fraudulent representation or declaration, either verbally or in writing, it shall be lawful for the Registrar, upon the receipt of sufficient evidence of the falsity or fraudulent character of said repre-

Penalty for false registration.



sensation or declaration, to represent the matter to the Council, and upon the written order of the President, attested by the seal of the College, to erase the name of such person from the register, and to make known the fact and cause of such erasure by notice to be published in the *Ontario Gazette*; and after such notice has appeared the person whose name has been erased as aforesaid shall cease to be a member of the College of Physicians and Surgeons of Ontario, and shall cease to enjoy any of the privileges conferred by registration under this Act at any future time, without the express sanction of the Council.

2. If any person wilfully procures or attempts to procure himself to be registered under this Act, by making any false or fraudulent representation or declaration, either verbally or in writing, he shall on conviction thereof before any Justice of the Peace incur a penalty not exceeding one hundred dollars; and every person knowingly aiding and assisting him therein shall on conviction thereof incur a penalty of not less than twenty nor more than fifty dollars for each such offence. 37 V. c. 30, s. 39.

Penalty for practising without registration.

40. It shall not be lawful for any person not registered to practise Medicine, Surgery or Midwifery for hire, gain, or hope of reward; and if any person not registered pursuant to this Act for hire, gain or hope of reward practises or professes to practise Medicine, Surgery or Midwifery or advertises to give advice in Medicine, Surgery or Midwifery, he shall upon a summary conviction thereof before any Justice of the Peace, for any and every such offence, pay a penalty not exceeding one hundred dollars nor less than twenty-five dollars. 37 V. c. 30, s. 40 (1).

Penalty for falsely pretending, etc.

41. Any person who wilfully or falsely pretends to be a Physician, Doctor of Medicine, Surgeon, or general practitioner, or assumes any title, addition or description other than he actually possesses and is legally entitled to, shall be liable on conviction thereof before a Justice of the Peace to a penalty not exceeding fifty dollars, nor less than ten dollars. 37 V. c. 30, s. 40 (2).

Penalty for using title implying registration.

42. Any person not registered pursuant to this Act who takes or uses any name, title, addition or description implying or calculated to lead people to infer that he is registered under this Act, or that he is recognized by law as a Physician, Surgeon, Accoucheur, or a Licentiate in Medicine, Surgery or Midwifery, shall be liable upon a summary conviction thereof before any Justice of the Peace to pay any penalty not exceeding one hundred dollars, nor less than twenty-five dollars. 37 V. c. 30, s. 40 (3).

**43.** No person shall be entitled to recover any charge in any Court of Law for any medical or surgical advice, or for attendance, or for the performance of any operation, or for any medicine which he may have prescribed or supplied, unless he is registered under this Act: but this section shall not extend to the sale of any drug or medicine by any duly licensed chemist or druggist. 37 V. c. 30, s. 35.

None entitled to recover charges unless registered.

**44.** No person shall be appointed as medical officer, physician or surgeon in any branch of the public service of this Province, or in any hospital or other charitable institution not supported wholly by voluntary contributions, unless he is registered under the provisions of this Act. 37 V. c. 30, s. 37.

Public appointments only conferred on registered persons.

**45.** No certificate required by any Act now in force, or that may hereafter be passed, from any physician or surgeon or medical practitioner, shall be valid unless the person signing the same is registered under this Act. 37 V. c. 30, s. 38.

Certificates by unregistered persons invalid.

**46.** Any prosecutions under this Act may be brought or heard before any one or more of Her Majesty's Justices of the Peace having jurisdiction where any such offence has been committed; and such Justice or Justices may award payment of costs in addition to the penalty; and in case the penalty and costs awarded by him or them are not upon conviction forthwith paid, may commit the offender to the Common Gaol, there to be imprisoned for any term not exceeding one month, unless the penalty and costs are sooner paid. 37 V. c. 30, s. 40 (5).

Where prosecution may be brought.

**47.** All prosecutions against any one acting in contravention of the provisions of this Act, shall take place in accordance with *The Act respecting Summary Convictions before Justices of the Peace*. 37 V. c. 30 s. 43.

Procedure in prosecutions under this Act. Rev. Stat. c. 74.

**48.** Any person convicted under this Act who gives notice of appeal against the decision of the convicting Justice, shall be required before being released from custody to give to said Justice satisfactory security for the amount of the penalty, costs of conviction and appeal. 37 V. c. 30, s. 40 (6).

Security on appeals.

**49.** In any trial under this Act the burden of proof as to registration shall be upon the person charged. 37 V. c. 30, s. 40 (4).

*Onus probandi.*

**50.** In all cases where proof of registration under this Act is required to be made, the production of a printed or other copy of the register, certified under the hand of the Registrar of the Council for the time being shall be sufficient evidence of all persons who are registered practitioners, in lieu of the production of

Evidence of registry and signature of Registrar.

the original register; and any certificate upon such printed or other copy of the register, purporting to be signed by any person in his capacity of Registrar of the Council under this Act shall be *prima facie* evidence that such person is such Registrar without any proof of his signature or of his being in fact such Registrar. 37 V. c. 30, s. 42.

Limitation of prosecutions.

**51.** Every prosecution under this Act shall be commenced within one year from the date of the alleged offence. 37 V. c. 30, s. 41.

Stay of proceedings.

**52.** The Council by an order signed by the President having the seal of the College appended thereto, may stay proceedings in any prosecution under this Act where it is deemed expedient. 37 V. c. 30, s. 41.

To whom penalties paid.

**53.** All penalties recoverable under this Act shall be paid to the convicting Justice and by him be paid to the Registrar of the College, and shall form part of the funds thereof.

Prosecution.

2. Any person may be prosecutor or complainant under this Act, and the Council may allot such portion of the penalties recovered as may be expedient towards the payment of such prosecutor. 37 V. c. 30, s. 41.

Council funds.

**54.** All moneys forming part of the Council funds shall be paid to the Treasurer, and may be applied to carry this Act into execution. 37 V. c. 30, s. 43.

Meaning of certain words.

**55.** The words "legally qualified medical practitioner," or "duly qualified medical practitioner," or any other words importing legal recognition of any person as a medical practitioner or member of the medical profession, when used in any Act or law shall, in so far as such Act or law applies to this Province, be construed to mean a person registered under this Act. 37 V. c. 30, s. 36.

## SCHEDULE "A."

(Sections 6 and 15.)

1. Western and St. Clair Electoral Divisions, as established previous to Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

2. Malahide and Tecumseth Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

3. Saugeen and Brock Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

4. Gore and Thames Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

5. Erie and Niagara Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

6. Burlington and Home Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

7. Midland and York Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

8. King's and Queen's Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

9. Newcastle and Trent Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

10. Quinté and Cataraqui Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

11. Bathurst and Rideau Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

12. St. Lawrence and Eastern Electoral Divisions, as established previous to the Confederation of the British American Provinces, for election of Members of the Legislative Council of the late Province of Canada.

---

### SCHEDULE "B."

(Sections 24 and 25).

1. License to practise Physic, Surgery and Midwifery, or either, within Upper Canada, granted under the Acts of Upper Canada, fifty-nine George the Third, chapter thirteen, and eight George the Fourth, chapter three, respectively.

2. License or diploma granted under the second Victoria, chapter thirty-eight, or under the Consolidated Statutes for Upper Canada, chapter forty, or any Act amending the same.

3. License or authorization to practise Physic, Surgery and Midwifery, or either, within Lower Canada, whether granted under the Ordinance twenty-eight George the Third, chapter eight, or under the Act ten and eleven Victoria, chapter twenty-six, and the Acts amending the same, or under chapter seventy-one of the Consolidated Statutes for Lower Canada, or any Act amending the same.

4. Certificate of qualification to practise Medicine, Surgery and Midwifery, or either, hereafter to be granted by any of the Colleges or bodies named or referred to in section six of this Act.

5. Medical or surgical degree or diploma of any University or College in Her Majesty's dominions, or of such other Universities or Colleges as the Council may determine.

6. Certificate of registration under the Imperial Act, twenty-one and twenty-two Victoria, chapter ninety, known as "The Medical Act," or any Act amending the same.



7. Commission or warrant as Physician or Surgeon in Her Majesty's military service.

8. Certificates of qualification to practise under any of the Acts, relating to Homœopathy or the Eclectic system of Medicine.

### SCHEDULE "C."

(Section 36.)

NAME.	Residence.	Qualifications and additions
A. B. Toronto, County of York .....		M.A., M.D., Toronto University.
C. D. Kingston, County of Frontenac .....		M.A., M.D., Queen's University.
E. F. Etobicoke, County of York .....		Licentiate, Medical Board.
G. H. Toronto .....		do Toronto School of Medicine.

## CHAPTER 143.

### An Act respecting the Study of Anatomy.

What bodies may be delivered for dissection, s. 1.	Notice of deaths, when to be given to Inspectors by Coroners, ss. 7-9.
Who entitled to receive such bodies, s. 2.	Emoluments of Inspector, s. 10.
Inspectors of Anatomy—appointment and duties of, ss. 3-6.	Security by persons opening dissecting rooms, s. 11.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Certain bodies may be delivered for dissection.

1. The body of any person found dead, publicly exposed, or who immediately before death had been supported in and by any public institution receiving pecuniary aid from the Provincial Government, shall, unless the person so dying otherwise directs, be delivered to persons qualified as hereinafter mentioned, but if such body is claimed within the usual period for interment by *bona fide* friends or relatives, the body shall be delivered to them, or if the person otherwise directed as afore-

said before death, or, being a lunatic, dies in any Provincial Asylum for the Insane, the body shall be decently interred. C. S. C. c. 76, s. 2; 26 V. c. 42, s. 2.

2. The persons qualified to receive such unclaimed bodies shall be public teachers of Anatomy or Surgery, or private medical practitioners, having three or more pupils for whose instruction such bodies are actually required; and if there be any public medical school in the locality, such school shall have a preferable claim to the body. C. S. C. c. 76, s. 3.

To whom such bodies shall be delivered.

3. The Lieutenant-Governor may appoint, during pleasure, a person, not being a medical practitioner, but being a person holding some municipal office, and unconnected with any public or private school of medicine, to be the Inspector of Anatomy for each City, Town or place in which there is any such public institution or medical school. C. S. C. c. 76, s. 4.

Lieutenant-Governor to appoint Inspectors of Anatomy in certain places.

4. For the purposes of this Act, the City of Toronto and the Village of Yorkville shall together form and be deemed to be but one place and one locality. 27-8 V. c. 22, s. 1.

Toronto and Yorkville united as to this Act.

5. The Lieutenant-Governor may appoint, during pleasure, a person, not being a medical practitioner, but being a person holding some municipal office in the said City of Toronto, or in the said Village of Yorkville, and unconnected with any public or private school of medicine, to be, or two such persons to be jointly, Inspector of Anatomy for the City of Toronto and the Village of Yorkville. 27-8 V. c. 22, s. 2.

Inspector or Inspectors of Anatomy may be appointed for Toronto and Yorkville.

6. It shall be the duty of every Inspector of Anatomy—

1. To keep a register of the name, age, sex (and of the birth-place, if it can be ascertained) of all unclaimed bodies given up for dissection;

Duties of such Inspectors of Anatomy.

2. To keep a register of all medical practitioners duly qualified to receive and desirous of receiving bodies for dissection;

3. To make an impartial distribution of the bodies in rotation, according to the actual wants of the claimants;

4. To inspect the several authorized dissecting rooms at least once in every six weeks, and to direct the removal and decent interment of any remains that he deems it advisable to have interred;

5. To report to the Police Magistrate or the chief municipal authority any infraction of the rules of common decency, or any improper conduct which he knows to have been committed by the teachers or their students;

6. To keep his registers open for the inspection of any medical practitioner who may desire to inspect them. C. S. C. c. 76, s. 5.

Coroner to give notice of bodies found exposed.

7. The Coroner who presides at the inquest on any body found publicly exposed, and unclaimed by any *bona fide* friend or relative, shall give notice thereof to the Inspector of Anatomy of the locality, if there be one, failing which, he shall cause the body to be interred, as has been customary. C. S. C. c. 76, s. 6.

Superintendents of Public Institutions to give notice of deaths in the same.

8. The Superintendent of every Public Institution receiving Government aid, shall upon the death of any inmate of the Institution who is not known to have any friends or relatives entitled to claim the body, immediately give notice of such death to the Inspector of Anatomy for the locality. C. S. C. c. 76, s. 7.

Register to be kept by such Superintendents.

9. Each such Superintendent shall keep a register shewing the name, age, sex and birth-place (if known) of each person whose body is given over for dissection, and the name of the medical practitioner to whom such body is delivered; and no such Superintendent shall deliver any body, except upon the written order of the Inspector of Anatomy for the locality. C. S. C. c. 76, s. 8.

Emoluments of the Inspectors of Anatomy.

10. The Inspector of Anatomy shall receive five dollars for every body delivered over for dissection, which sum shall be paid to him by the teacher or medical practitioner, on receipt of the order for the delivery of the body. C. S. C. c. 76, s. 9.

Medical practitioners availing themselves of this Act to give security.

11. Every medical practitioner wishing to avail himself of the benefits of this Act, shall appear before one of Her Majesty's Justices of the Peace and the Inspector of Anatomy, and give security, himself in the sum of eighty dollars, with two good and sufficient sureties in the sum of forty dollars each, for the decent interment of the bodies after they have served the purposes required; and upon the due fulfilment of these conditions, the Inspector of Anatomy shall deliver to such medical practitioner a written authority to open a dissecting room entitled to the benefits of this Act. C. S. C. c. 76, s. 10.

---

## CHAPTER 144.

## An Act respecting Dentistry.

Royal College of Dental Surgeons continued, s. 1.	Certificates of License, who entitled to, s. 14.
Board of Directors of, ss. 2-7.	Annual meetings of the Board for holding examinations, s. 15.
Powers of Board—	Examination fees, s. 16.
Establishment of School of Dentistry, s. 8.	Granting of Certificates of License, &c., ss. 17-19.
Preliminary examinations of students s. 9.	Offences and penalties—
Curriculum of studies and regulations respecting students, s. 10.	Practising without certificate, s. 20.
Examination of candidates and granting of certificates of license, s. 11.	Procedure on prosecutions, ss. 21-25.
Conferring of degree of M. D. S., s. 12.	Persons contravening this Act not to recover for work done, s. 26.
By-laws, s. 13.	Medical practitioners not affected, s. 27.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:

1. "The Royal College of Dental Surgeons of Ontario" incorporated under the Act passed in the thirty-first year of Her Majesty's Reign, and chartered thirty-seven is continued, and every person who holds a valid and unforfeited certificate of license to practise Dentistry which has been granted to him by any Board of Directors duly elected under the said Act or this Act, shall be a member of the said corporation. 40 V. c. 23, s. 1.

2. The Board of Directors of said College shall consist of seven members, who shall hold office for two years, and of whom any four shall form a quorum. 31 V. c. 37 (O).

2. Any member may at any time resign by letter directed to the Secretary, and in the event of such resignation or a vacancy occurring by death or otherwise, the remaining members of the Board shall elect some fit and proper person from among the licentiates to supply such vacancy. 31 V. c. 37 s. 3; 35 V. c. 34, s. 1.

3. Elections of the Board of Directors shall be held on the third Tuesday in July, in the City of Toronto, in every second year; and the persons qualified to vote at any such election



shall be such persons as have obtained certificates of license under the provisions of the Acts respecting Dentistry heretofore in force, or who hereafter obtain certificates of license under the provisions of this Act. 35 V. c. 34, s. 3.

First meeting  
of the the  
Board.

**4.** Every Board shall hold its first meeting on the day following the election of such Board, at noon at such place in the City of Toronto as may from time to time be fixed by the Board. 35 V. c. 34, s. 2.

Appointment  
of a President  
and other  
officers.

**5.** The said Board shall, at its first meeting elect from among its members a President, Treasurer, Secretary and Registrar, and such other officers as may be necessary to the working of this Act and the rules and regulations of said Board; and the said Board shall from time to time, in the event of the President being absent, from any cause whatever, elect, from among its members, a person to preside at its meetings, who shall have the same powers, and exercise the same functions as the President. 31 V. c. 37, s. 7.

Remuneration

**6.** There shall be allowed and paid to each of the members of the Board such fees for attendances (in no case to exceed five dollars per day) and such reasonable travelling expenses as may from time to time be allowed by the Board. 31 V. c. 37, s. 8.

Funds payable  
to the Treas-  
urer.

**7.** All moneys forming part of the funds of said Board shall be paid to the Treasurer, and shall be applied to the carrying of this Act into execution. 31 V. c. 37, s. 9.

Establishment  
of a School  
of Dentistry.

**8.** The said Board shall have power and authority to make arrangements for the establishment of a School of Dentistry in the City of Toronto. 35 V. c. 34, s. 10.

Examinations.

**9.** The said Board shall have power and authority to appoint one or more examiners for the matriculation or preliminary examination of all students entering the profession. Such examination shall be passed prior to entering into articles of indenture with a Licentiate of Dentistry, and the commencement of study shall date from the signing of said articles. 35 V. c. 34, s. 4.

Curriculum.

**10.** The said Board shall also have power and authority to fix and determine, from time to time, a curriculum of studies to be pursued by students, and to fix and determine the period for which every student shall be articulated and employed under some duly licensed practitioner, and the examination necessary to be passed before said Board, and the fees to be paid into the hands of the Treasurer of said Board, before receiving a certificate of license to practice the profession of Dentistry. 35 V. c. 34, s. 4.

**11.** The Board of Directors of said College shall also have authority to examine candidates and grant certificates of license to practise Dental Surgery in this Province. 31 V. c. 37, ss. 1 & 2. Authority to examine candidates and grant licenses.

**12.** With a view to encourage the attainment of a higher standard of education among the licentiates of the said College, the Board may by by-law provide that any licentiate in Dentistry, being a member of said College of not less than five years' standing, shall receive the title of "Master of Dental Surgery" of said College, upon passing such examinations and complying with such regulations as the said Board of Directors may from time to time prescribe. 40 V. c. 23, s. 10. Title of M. D. S. of the College may be conferred.

**13.** The said Board shall from time to time make such rules, regulations and by-laws as may be necessary for the proper and better guidance, government and regulation of the said Board and said profession of Dentistry, and the carrying out of this Act; which said rules, regulations and by-laws, shall be published for two consecutive weeks in the *Ontario Gazette*. The Board to make rules, regulations and by-laws. Publication in the Ontario Gazette.

2. Any or all of such rules, regulations and by-laws shall be liable to be cancelled and annulled by an order of the Lieutenant-Governor of this Province. 31 V. c. 37, s. 13; 35 V. c. 34, s. 7. May be annulled by Lieut.-Governor.

**14.** All persons being British subjects by birth or naturalization, who were engaged on the fourth day of March one thousand eight hundred and sixty eight in the practice of the profession of Dentistry, or who, not having been residents of Ontario, have had three years experience in the practice of Dentistry shall be entitled to the certificate of "Licentiate of Dental Surgery," upon their furnishing to the said Board satisfactory proof of their having been so engaged, and upon passing the required examination, and upon payment of the fees authorized and fixed by the said Board, (for the payment of which the Treasurer's receipt shall be sufficient evidence), and all persons being British subjects, by birth or naturalization, who were constantly engaged for five years and upwards in established office practice, next preceeding the said fourth day of March, one thousand eight hundred and sixty-eight, in the practice of the profession of Dentistry in the Province of Ontario shall, upon such proof as aforesaid, and upon the payment of such fees as aforesaid, be entitled to such certificate without passing any examination. 31 V. c. 37, s. 12; 35 V. c. 34, s. 6. Who entitled to certificates.

**15.** The said Board shall hold one meeting in each and every year in the City of Toronto at such place as may from time to time be fixed by the Board for the purpose of examining students, granting certificates of license, and doing such other business as may properly come before them. Such meeting shall be held on the first Tuesday in March and shall continue from day to day until the business before the Board is finished; Annual meetings of the board.

but no such meeting shall continue for more than one week.  
35 V. c. 34, s. 5.

Fees payable  
before exam-  
ination.

**16.** Every person desirous of being examined by the said Board touching his qualifications for the practice of the profession of Dentistry, shall at least one month before the sittings of said Board, pay into the hands of the Treasurer the required fees, and enclose and deliver to the Secretary the Treasurer's receipt for the same, together with satisfactory evidence of his apprenticeship, integrity and good morals; and it shall be the duty of the Board to hold a sitting for the purpose hereinbefore mentioned on the first Tuesday in March next ensuing the said payment and delivery. 31 V. c. 37, s. 14; 35 V. c. 34, s. 8.

Certificate of  
License.

**17.** If the Board is satisfied by the examination that the person is duly qualified to practise the profession of Dentistry, and is further satisfied that he is a person of integrity and good moral character, it shall grant him a certificate of license subject to such rules, regulations and by-laws, and the title of "Licentiate of Dental Surgery," which certificate and title shall entitle him to all the rights and privileges of this Act. 31 V. c. 37, s. 15; 35 V. c. 34, s. 9.

Designation  
and title.

Certificate to  
be under the  
corporate seal.

**18.** Every certificate of license shall be sealed with the corporate seal of the College and signed by the President and Secretary of said Board; and the production of such certificate of license shall be *prima facie* evidence in all Courts of Law and upon all proceedings of whatever kind, of its execution and contents. 31 V. c. 37, s. 16.

Certified lists  
of licenses  
granted to be  
enclosed to the  
Provincial  
Secretary an-  
nually.

**19.** The Secretary of the said Board shall, on or before the fifteenth day of January in each and every year enclose to the Provincial Secretary a certified list of the names of all persons to whom certificates of license have been granted during the then next preceding year. 31 V. c. 37, s. 17.

No person to  
practise with-  
out certificate

**20.** No person who is not a member of the said the Royal College of Dental Surgeons of Ontario, shall practise the profession of Dentistry, for hire, gain, or hope of reward, or pretend to hold, or take or use any name, title, addition or description implying that he holds a certificate of license to practise Dentistry, or that he is a member of the said The Royal College of Dental Surgeons of Ontario, or shall falsely represent, or use any title representing that he is a graduate of any Dental College.

or without  
authority as-  
sume certain  
titles.

Penalty.

**2.** Every person who contravenes any of the provisions of this section, shall for each such offence incur a penalty of twenty dollars. 40 V. c. 23, s. 2.

Penalties how  
recoverable.

**21.** Every penalty imposed by this Act may be recovered with full costs of prosecution on summary conviction before

any one or more of Her Majesty's Justices of the Peace for the County in which the offence is committed. 40 V. c. 23, s. 3.

**22.** Except where it is herein otherwise provided, the procedure upon any such prosecution shall be that prescribed by *The Act respecting Summary Convictions before Justices of the Peace*. 40 V. c. 23, s. 4.

Procedure upon prosecutions.  
Rev. Stat. c. 74.

**23.** The penalty and costs imposed upon any such conviction shall be forthwith paid over to the convicting Justice, and the penalty shall be by him paid over to the Secretary of the said The Royal College of Dental Surgeons of Ontario; and in case the said penalty and costs are not paid forthwith, the said Justice may issue his warrant to commit the defendant to the Common Gaol of the County, there to be imprisoned for any term not exceeding one month, unless the penalty and costs are sooner paid. 40 V. c. 23, s. 5.

Application of penalty.

**24.** The penalty imposed by the twentieth section of this Act may be recovered with full costs of suit in the name of The Royal College of Dental Surgeons of Ontario, in the proper Division Court. 40 V. c. 23, s. 6.

Penalty may be recovered in name of the College.

**25.** On any prosecution or suit under this Act, the burden of proof that the defendant is entitled to practise the profession of Dentistry as aforesaid, or to use the title assumed by him, or that he is a graduate of the Dental College of which he professes to be a graduate (as the case may be), shall be upon the defendant. 40 V. c. 23, s. 7.

In prosecutions or suits the burden of proof to be on defendant.

**26.** No person who contravenes any of the provisions of the twentieth section of this Act shall be entitled to sue or recover in any Court of Law or Equity for any work done, or materials provided by him, in the ordinary and customary work of a Dentist. 40 V. c. 23, s. 8.

Persons contravening this Act not to recover for work done.

**27.** Nothing in this Act shall affect or interfere with the rights and privileges conferred upon legally qualified medical practitioners by the Acts relating to the practice of Medicine and Surgery in this Province. 31 V. c. 37, s. 19; 40 V. c. 23, s. 2. See *Rev. Stat. c. 142, s. 55*.

This Act not to interfere with registered medical practitioners.



## CHAPTER 145.

## An Act respecting Pharmacy.

---

Short title, s. 1.	Registration of qualified persons, ss
Ontario College of Pharmacy continued, s. 2.	15-23.
Members and Associates, ss. 3-5.	Preparation of compounds, s. 24.
Power to acquire real estate, s. 6.	Sale of poisons, ss. 25-27.
Pharmaceutical Council, ss. 7-10.	Offences and penalties, ss. 28-31.
Examination of candidates for certificates of competency, ss. 11-14.	Medical practitioners not affected by this Act, s. 32.
	Executors may carry on business of deceased chemist, s. 33.

---

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.      **1.** This Act may be cited as "*The Pharmacy Act.*"

Ontario College of Pharmacy continued.      **2.** The Ontario College of Pharmacy incorporated by the Act passed in the thirty-fourth year of Her Majesty's reign and chaptered thirty-four is hereby continued. *See 34 V. c. 34, s. 6.*

Members.      **3.** The following persons shall, upon payment of a fee of four dollars to the Registrar of the said College, be entitled to be enrolled as members of the said College:

(a.) Every person who had carried on business on his own account or in partnership with any other person as an Apothecary, or Chemist and Druggist in this Province, for a period of three years before the passing of "*The Pharmacy Act of 1871*" on the fifteenth day of February, 1871;

(b.) Every person who on the said day was engaged on his own account, or in partnership with any other person, in the business of an Apothecary, or Chemist and Druggist;

(c.) Every person who, at the said date had served an apprenticeship of three years, and had acted as Druggist's assistant for one year. *34 V. c. 34, s. 4.*

(d.) Every person who has heretofore passed or hereafter passes the examination prescribed by the Council of said College. See 34 V. c. 34, s. 14.

4. The following persons shall, on payment of a fee of two Associates. dollars, be entitled to be enrolled as associates of the said College; namely,

Every person engaged in the business of an Apothecary, or Chemist, or Druggist, as a clerk, assistant or apprentice. 34 V. c. 34, s. 4.

5. Any associate may, upon passing such an examination as Admission of associates as members. may be prescribed by the Council, be admitted and enrolled as a member of the said College. 34 V. c. 34, s. 5.

6. The Ontario College of Pharmacy shall have power to acquire and hold real estate, not exceeding at any time in annual value five thousand dollars, and the same, or any part thereof, may alienate, exchange, mortgage, lease or otherwise charge or dispose of, as occasion may require, and may erect buildings for the purpose of accommodating Lecturers on Chemistry or Pharmacy, or for Library, Pharmaceutical Museum, or specimen room for the use of the members and associates of said College; and all fees payable under this Act shall belong to the Fees. said College for the purposes of this Act. 34 V. c. 34, s. 18.

#### PHARMACEUTICAL COUNCIL.

7. There shall be a Council of said College, to be called the Council, of whom composed. Pharmaceutical Council, which shall consist of thirteen members, who shall be elected as hereinafter provided, and shall hold office for two years, and the said Council shall have authority to grant certificates of competency to conduct the business of a Chemist or Druggist, and to be registered subject to the provisions of this Act. 34 V. c. 34, ss. 7 & 8.

8. Any member of said Council may at any time resign by Resignation of members and vacancy how filled. letter directed to the Registrar of said College; and in the event of any vacancy occurring, the remaining members of the Council shall fill up such vacancy from the members of the College. 34 V. c. 34, s. 8.

9. An election of members of the said Council shall be held Subsequent elections, how to be held. on the first Wednesday in July, in every second year, and the persons qualified to vote at such election, shall be such persons as are members of the said College. 34 V. c. 34, s. 10.

10. The Council so elected shall, at their first meeting, elect Presiding officers, how chosen. from among themselves a President and Vice-President, and

shall appoint a Registrar and such other officers as the said Council may consider necessary. 34 V. c. 34, s. 11.

#### CERTIFICATES OF COMPETENCY.

Sittings of the Council for granting certificates.

**11.** The said Council shall hold at least two sittings in every year, on the first Wednesday in February and first Wednesday in August, for the purpose of granting certificates of competency, at such places as they may by resolution appoint, of which due notice shall be given for at least one month in the *Ontario Gazette*, and at least two papers in the City of Toronto. 34 V. c. 34, s. 12.

Powers of the Council as to subjects of examination, etc.

**12.** The Council of the said College shall, subject to the supervision and disallowance thereof by the Lieutenant-Governor in Council, have authority to prescribe the subjects upon which candidates for certificates of competency shall be examined; to establish a scale of fees, not to exceed four dollars, to be paid by associates of the said College and other persons applying for examination; and to make by-laws, rules and orders for the regulation of their own meetings and proceedings and those of the College; and for the admission of Druggists' assistants and apprentices as associates of the said College; and for the remuneration and appointment of examiners and officers of the said College; and for the payment of the actual expenses of the members of the said Council in attending its sittings, or in attending upon the business of the said College; and in respect to any other matters which may be requisite for the carrying out of this Act. 34 V. c. 34, s. 19.

Candidates for examination to pay fees and give notice.

**13.** Every person, desirous of being examined touching his qualifications to act as a Chemist and Druggist, shall, at least two weeks before the sitting of the said Council, pay into the hands of the Registrar the required fees, not exceeding four dollars, together with a notice of his intention to present himself for such examination. 34 V. c. 34, s. 13.

Who may examine.

**14.** Such examinations may be conducted by the members of the Council, or by persons appointed by them. 34 V. c. 34, s. 14, *last clause*.

#### REGISTRATION.

Registers to be kept of persons registered or entitled to be registered.

**15.** It shall be the duty of the Registrar to make and keep a correct Register, in accordance with the provisions of this Act, as shown in Schedule B, of all persons who may be entitled to be registered under this Act, and to enter opposite the names of all registered persons who have died, a statement of such fact, and from time to time to make the necessary alterations in the addresses of persons registered under this Act, and shall cause to be printed and published on or before the fifteenth day of June of each year, an alphabetical list of the members who were on the first day of June of that year entitled to keep open shop as Pharmaceutical Chemists. 34 V. c. 34, s. 15.

**16.** Any person, having passed such examination as aforesaid to the satisfaction of the majority of the examiners, shall be entered upon the Roll of registered Chemists and Druggists, and shall become a member of the College. 34 V. c. 34, s. 14, *first clause*.

Entry on the Roll.

**17.** All persons who on the 15th day of February, 1871, were in business as Chemists and Druggists, or Chemists, Druggists or Apothecaries, upon their own account or in partnership with any other person, or who had before said day served an apprenticeship of three years and acted as a Druggist's assistant for one year, shall be entitled to be registered under this Act, upon production to the Registrar of such evidence of their having been so engaged as the Council of the said College may require, and upon payment of a registration fee of four dollars; but in case any person has paid the fee of four dollars mentioned in the third section, the same shall be credited to him as his registration fee. 34 V. c. 34, s. 17, *first part*.

Certain persons may be entered on Register,

on certain evidence.

**18.** No names shall be entered in the Register except of persons authorized by this Act to be registered, nor unless the Registrar is satisfied by proper evidence that the person claiming is entitled to be registered; and any appeal from the decision of the Registrar may be decided by the Council of the said College; and any entry proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased from or amended in the Register by order of the Council. 34 V. c. 34, s. 16.

Who may not be entered on the Register.

Appeal from decision of the Registrar.

Fraudulent or incorrect entries may be erased.

**19.** Upon any person being registered under this Act, he shall be entitled to receive a certificate in the form of Schedule D, or to the like effect, under the corporate seal of the said College, and signed by the Registrar, and shall be entitled to receive a similar certificate annually upon payment of the said fee of four dollars. 34 V. c. 34, s. 21.

Certificate to be granted on registration.

**20.** There shall be payable to the Registrar of the said College, for the uses of the College, on the first day of May of each year, by every person registered and carrying on business as a Pharmaceutical Chemist, the sum of four dollars. 34 V. c. 34, s. 17, *last clause*.

Fees.

**21.** Any person registered under this Act, and no other person, shall be entitled to be called a "Pharmaceutical Chemist," and no other person except a Pharmaceutical Chemist as aforesaid, or his employee or employees, shall be authorized to compound prescriptions of legally authorized medical practitioners; but no person shall be entitled to any of the privileges of a Pharmaceutical Chemist, or member of the said College, who is in default in respect to any fees payable by him by virtue of this Act. 34 V. c. 34, s. 20.

Who alone may be styled Pharmaceutical Chemist, and dispense.

**22.** Upon a resolution of the Council of the said College being passed, declaring that any person in consequence of his conviction

Disbarment of



member on conviction of offences.

tion for any offence or offences against this Act is, in the opinion of the Council, unfit to be on the Register under this Act, the Lieutenant-Governor in Council may direct that the name of such person shall be erased from such Register, and it shall be the duty of the Registrar to erase the same accordingly. 34 V. c. 34, s. 29.

Certificate to be publicly displayed.

**23.** Every Pharmaceutical Chemist carrying on business on his own account, shall display his certificate in a conspicuous position in his place of business. 34 V. c. 34, s. 22.

#### PREPARATION OF COMPOUNDS.

How compounds to be prepared

**24.** All compounds named in the British Pharmacopœa shall be prepared according to the formula directed in the latest edition published "by authority" unless the College of Physicians and Surgeons of this Province selects another standard or unless the label distinctly shows that the compound is prepared according to another formula. 34 V. c. 34, s. 24.

#### SALE OF POISONS.

Restriction on sale of poisons, &c., and on the assumption of certain titles.

**25.** No person shall sell or keep open shop for retailing, dispensing, or compounding poisons, or sell or attempt to sell any of the articles mentioned in Schedule A to this Act, or assume or use the title "Chemist and Druggist," or "Chemist" or "Druggist," or "Pharmacist or Apothecary" or "Dispensing Chemist or Druggist," in any part of the Province of Ontario, unless such person is registered under this Act, and unless such person has taken out a certificate under the provisions of section nineteen of this Act, for the time during which he is selling, or keeping open shop for retailing, dispensing or compounding poisons, or assuming or using such title. 34 V. c. 34, s. 1.

Certain articles to be deemed poisonous.

**26.** The several articles named or described in Schedule A, shall be deemed to be poisonous within the meaning of this Act, and the Council of the Ontario College of Pharmacy, hereinbefore mentioned, may, from time to time by resolution declare, that any article in such resolution named ought to be deemed a poison within the meaning of this Act, and thereupon the said Council shall submit the same for the approval of the Lieutenant-Governor in Council, and if such approval is given, then such resolution and approval shall be advertised in the *Ontario Gazette*, and on the expiration of one month from such advertisement, the article named in such resolution shall be deemed to be a poison within the meaning of this Act, and the same shall be subject to the provisions of this Act or such of them as may be directed by the Lieutenant-Governor in Council. 34 V. c. 34, s. 2.

Certain poisons to be sold only in a certain manner.

**27.** No person shall sell any poison named in the first part of Schedule A, either by wholesale or retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained is distinctly labelled with the name of the article and with the word "*Poison*," and if sold by retail, then also

with the name and address of the proprietor of the establishment in which such poison is sold; and no person shall sell any poison mentioned in the first part of Schedule A, to any person unknown to the seller unless introduced by some person known to the seller; and on every sale of any such article the person actually selling the same shall, before delivery, make an entry in a book to be kept for that purpose, in the form set forth in Schedule C to this Act, stating the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, the purpose for which it is stated by the purchaser to be required, and the name of the person, if any, who introduced him, to which entry the signature of the purchaser shall be affixed. 34 V. c. 34, s. 3.

#### OFFENCES AND PENALTIES.

**28.** No person shall wilfully or knowingly sell any article under the pretence that it is a particular drug or medicine which it is not in fact, and any person so doing (besides any other penalties to which he may be liable) shall be subject to the penalties prescribed by the twenty-ninth section of this Act. 34 V. c. 34, s. 23. Penalties on wrongful sales.

**29.** Any person transgressing any of the provisions of this Act, or selling any poison in violation thereof, shall for the first offence, incur a penalty not exceeding twenty dollars and costs of prosecution, and for each offence committed subsequent to such conviction, a penalty not exceeding fifty dollars and costs of prosecution, to be recovered in a summary manner before any two Justices of the Peace or a Police Magistrate on the oath of one or more credible witnesses, one moiety to belong to the prosecutor and the other to Her Majesty for the public uses of this Province. 34 V. c. 34, s. 25. Penalties for infringement of this Act.

**30.** In any prosecution under this Act it shall be incumbent upon the defendant to prove that he is entitled to sell or keep open shop for compounding medicines or retailing poisons, and to assume the title of Chemist and Druggist or other title mentioned in section twenty-five of this Act; and the production of a certificate purporting to be under the hand of the Registrar and under the seal of the said College, showing that he is so entitled, shall be *prima facie* evidence that he is so entitled. 34 V. c. 34, s. 26. Proof of prosecutions.

**31.** No person selling articles in violation of the provisions of this Act shall recover any charges in respect thereof in any Court of Law or Equity. 34 V. c. 34, s. 27. Price of articles sold contrary to this Act not to be recovered.

#### ACT NOT TO AFFECT MEDICAL PRACTITIONERS.

**32.** Nothing in this Act contained shall extend to or interfere with the privileges conferred upon legally qualified medical practitioners by any of the Acts relating to the practice of Medicine and Surgery in this Province, and they may be registered as Act not to apply to medical practitioners.

Pharmaceutical Chemists without undergoing examination ; nor shall anything in this Act prevent any person whatsoever from selling goods of any kind to any person legally authorized to carry on the business of an Apothecary, Chemist, or Druggist or the profession of a Doctor of Medicine, Physician, or Surgeon, or Veterinary Surgeon, nor prevent the members of such professions supplying to their patients such medicine as they may require, nor interfere with the business of wholesale dealers in supplying poisons or other articles in the ordinary course of wholesale dealing.

2. Nothing in this Act shall prevent any member of the College of Physicians and Surgeons of Ontario from engaging in and carrying on the business of an Apothecary, Chemist or Druggist without registration under the provisions of this Act. 34 V. c. 34, s. 28. *See Rev. Stat. c. 142, s. 55.*

Executors  
may carry on  
business of  
deceased  
Chemist, &c.

**33.** Upon the decease of any person legally authorized and actually carrying on the business of Chemist and Druggist at the time of his death, it shall be lawful for the executor, administrator or trustee of the estate of such person to continue such business, if, and so long only as such business is *bona fide* conducted by a Pharmaceutical Chemist registered under this Act. 34 V. c. 34, s. 28.

## SCHEDULE "A."

(Sections 25-27.)

### PART 1.

Acid, Hydrocyanic (Prussic).	Ergot.
Aconite, and compounds thereof.	Hemp, Indian.
Antimony, Tartrate of.	Morphia, and its Salts and Solutions.
Arsenic, and the compounds thereof.	Oil, Cedar.
Atropine.	Strychnine, and Nux Vomica.
Conia, and the compounds thereof.	Savine, and preparations of.
Corrosive Sublimate.	Veratria.
Digitaline.	

### PART 2.

Acid, Oxalic.	Iodine.
Belladonna, and the compounds thereof.	Opium, with its preparations, including Laudanum, &c., but not Paregoric.
Beans, Calabar.	Pink Root.
Cantharides.	Podophyllin.
Chloral Hydrate.	Potassium, Iodide of.
Chloroform and Ether.	Potassium, Bromide of.
Conium, and the preparations thereof.	St. Ignatius' Beans.
Croton Oil and Seeds.	Santonine.
Cyanide of Potassium.	Scammony.
Euphorbium.	Stramonium and preparations.
Elaterium.	Valerian.
Goulard Extract.	Verdigris.
Hyosciamus and preparations.	Zinc, Sulphate of.
Hellebore.	

34 V. c. 34, *Sched. A.*

## SCHEDULE "B."

(Section 15.)

NAME.	RESIDENCE.	QUALIFICATION.	REMARKS.
A. B.	Kingston.	In Business for three years prior to 15th Feb. 1871.	Dead.
C. D.	Hamilton.	Examined and Certified, 12th July. 1871.	Erased by Order of Lieut.-Gov., Dated 14th Oct., 1876.
E. F.	London.	Served apprenticeship and as assistant.	

34 V. c. 34, *Sched. C.*

## SCHEDULE "C."

(Section 27.)

DATE.	Name of Purchaser.	Name and quantity of Poison sold.	Purpose for which it is required.	Signature of purchaser.	Address of Purchaser.	Name of Person intro- ducing Purchaser.

34 V. c. 34, *Sched. B.*



## SCHEDULE "D."

(Section 19.)

I hereby certify, that *C. D.*, having first passed the examination prescribed by the Pharmaceutical Council, (*or* having been in business, or having been qualified assistant, for three years prior to "The Pharmacy Act of 1871," *as the case may be*), was on the \_\_\_\_\_ day of \_\_\_\_\_ duly registered as a Pharmaceutical Chemist, and is authorized to carry on the business of Chemist and Druggist in the Province of Ontario, from the \_\_\_\_\_ day of \_\_\_\_\_

A. D. 18

, to the

day of

A. D., 18

(Signed)

E. F.

Registrar of the Ontario College of Pharmacy.

[Corporate Seal.]

34 V. c. 34, *Sched. D.*8. *Land Surveyors.*

CHAP. 146.—Land Surveyors and Survey of Lands, p. 1274.

## CHAPTER 146.

## An Act respecting Land Surveyors and the Survey of Lands.

Interpretation, s. 1.

Who only may act as Land Surveyors, s. 2.

Board of Examiners, ss. 3-6.

Admission of apprentices, ss. 7-9.

Qualifications for admission to practice—

In general, s. 10.

Persons admitted elsewhere, s. 11.

Persons holding University degrees, s. 12.

Graduates of Military College, Kingston, s. 13.

Transfer of apprentices, ss. 14, 15.

Instrument of apprenticeship to be filed, s. 16.

Examination of candidates for admission to practice, ss. 17-19.

Certificates of admission, s. 20.

Security, s. 21.

Oath of allegiance and of office, s. 22.

Suspension of Surveyors, s. 23.

Fees, ss. 24, 25.

Establishment of Boundary Lines—

Established Boundary Lines continued, s. 26.

Standard of measure, ss. 27, 28.

Chain-bearers—oath of, s. 29.

Powers of Surveyors to pass over lands in discharge of duty, s. 30.

Survey of Boundary Lines, ss. 31-70.

Mode and powers and duties of Surveyors, ss. 31-66.

Private surveys in Towns and Villages, ss. 67-69.

Registration of plans of, ss. 70-75.

Surveyors, journals and field notes of, s. 76.

Administration of oaths by, s. 77.

Manner of taking of evidence by, s. 78.

Offences and penalties, C. S. C. c. 77, ss. 31 &amp; 107, and C. S. U.

C. c. 93, s. 4, p. 1294.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Interpretation.

1. The expression "Commissioner of Crown Lands," wherever it occurs in this Act, shall mean the person discharging the duties of that officer. C. S. C. c. 77, s. 110.

LAND SURVEYORS.

2. No person shall act as a Surveyor of Lands within this Province unless he has been duly authorized to practise as a Land Surveyor according to the provisions of this Act, or had been so authorized before the passing thereof, according to the laws then in force. C. S. C. c. 77, s. 5.

Who may act as Land Surveyors.

BOARD OF EXAMINERS.

3. There shall be a Board of Examiners for the examination of candidates for admission to practise as Land Surveyors, to consist of the Commissioner of Crown Lands, the Director of the Geological Survey, and twelve other competent persons to be appointed from time to time by the Lieutenant-Governor, and to meet at the City of Toronto for the examination of candidates for admission to practise as Land Surveyors in Ontario. C. S. C. c. 77, ss. 1 & 19; C. S. C. c. 27, s. 3; 40 V. c. 7, *Sched. A* (161).

Board of Examiners.

4. Each member of the Board, save and except the Commissioner of Crown Lands, shall take an oath of office before a Judge of any of the Superior Courts of Law or Equity or before a Judge of any County Court; and any three of the members shall form a quorum. 35 V. c. 31, s. 3.

Oath of office.

2. The following shall be the form of the oath of office :

I, \_\_\_\_\_ of \_\_\_\_\_ having been appointed a member of the Board of Examiners for the admission of Provincial Land Surveyors for the Province of Ontario, do sincerely promise and swear that I will faithfully discharge the duties of such office without favour, affection or partiality : So help me God.

Sworn before me, \_\_\_\_\_  
at \_\_\_\_\_ day \_\_\_\_\_  
of \_\_\_\_\_ 18 \_\_\_\_\_

35 V. c. 31, s. 4.

5. The said Board, or a majority thereof, shall from time to time appoint a fit and proper person to be Secretary of the Board, who shall attend the sittings thereof, and keep a record of its proceedings. C. S. C. c. 77, s. 3.

A Secretary to the Board.

6. The said Board shall meet at the office of the Commissioner of Crown Lands, on the first Monday in each of the \_\_\_\_\_ Meetings \_\_\_\_\_ when and \_\_\_\_\_

where to be held.

months of January, April, July and October, in every year, unless such Monday be a holiday (in which case they shall meet on the day next thereafter not being a holiday), and may adjourn such meeting from time to time if they deem it necessary. C. S. C. c. 77, s. 4.

#### APPRENTICES.

Qualification for admission as an apprentice, and examination of applicants.

7. No person shall be admitted as an apprentice with any Provincial Land Surveyor unless he has previously passed an examination before the Board of Examiners, or before one of the members thereof, or before some Surveyor deputed by the Board for the purpose, as to his knowledge of vulgar and decimal fractions, the extraction of the square and cube root, of Euclid, plane and spherical trigonometry, mensuration of superficies, and the use of logarithms, and has obtained a certificate of such examination and of his proficiency from such Board. C. S. C. c. 77, s. 6; 40 V. c. 7, *Sched. A* (162).

Examination fee.

8. Before being so examined he shall pay into the Fee Fund the sum of ten dollars as the fee due by him on such examination, and a further sum of two dollars to the Secretary for the said certificate. C. S. C. c. 77, s. 7.

Notice to be given by applicants.

9. Applicants for such examination, previous to apprenticeship, shall give one month's notice to the Secretary of the Board of their intention to present themselves for examination, and pay to such Secretary a fee of one dollar for receiving and entering such notice. C. S. C. c. 77, s. 8.

#### QUALIFICATIONS FOR ADMISSION TO PRACTISE.

Qualification for admission to practise.

10. No person shall be admitted to practise as a Land Surveyor in and for Ontario until he has attained the full age of twenty-one years, nor unless he has gone through a course of geometry, including Euclid, plane trigonometry, mensuration of superficies, plotting and map drawing, spherical trigonometry, practical astronomy, and the rudiments of geology, and has served regularly and faithfully, for and during the space of three successive years, under an instrument in writing duly executed before two witnesses, as apprentice to a Land Surveyor for Ontario, duly admitted and practising therein as such, nor until he has received from the said Land Surveyor a certificate of his having so served during the said period, or proves to the satisfaction of the Board that he has so served. C. S. C. c. 77, s. 9; 35 V. c. 31, s. 1; 40 V. c. 7, *Sched. A* (163).

Admission of persons previously admitted in any part of Her Majesty's dominions.

11. It shall not be necessary for any Land Surveyor duly admitted to practise in any of Her Majesty's dominions other than this Province, to serve under an instrument in writing during three years as aforesaid, but it shall only be necessary for any such person admitted in the Province of Quebec so to serve during six months of actual practice in the field with a

Land Surveyor duly admitted and practising in this Province, and for any other such person so to serve during twelve successive months of actual practice, after which, on conforming with all the other requirements hereof, he may undergo the examination by this Act prescribed. C. S. C. c. 77, s. 11; 40 V. c. 7, *Sched. A.* (164).

**12.** Any person who, after having passed the preliminary examination hereinbefore required for admission to apprenticeship with a Land Surveyor, has followed a regular course of study in all the branches of education required by law for final admission as a Land Surveyor, through the regular sessions for at least two years, in any University of this Province wherein there is organized a complete course of instruction, practical as well as theoretical, in civil engineering, natural philosophy, geology, and the other branches of education required by law for such admission as a Land Surveyor, and who has thereupon received from such University, after due examination, a degree or diploma of qualification as a Civil Engineer and Land Surveyor, may be received as an apprentice by any Land Surveyor, and shall thereupon be only holden to serve as such apprentice during twelve months of actual service, or, if he has passed through such University course of study in less time than two full years, then for such time of actual service as with the period spent by him in such University course of study suffices to make up the full time of three years.

The case of persons who received university degrees or diplomas as Engineers or Land Surveyors.

2. After such actual service, such person shall, subject to the other provisions of this Act, have the same right to present himself for and to undergo the examination required by law, and if found qualified, then to be admitted to practise as a Land Surveyor, as if he had served the full three years' apprenticeship otherwise required by law. C. S. C. c. 77, s. 17.

Apprenticeship.

Examination.

**13.** The privilege of a shortened term of apprenticeship shall also be accorded to any graduate of the Military College at Kingston, and such person shall not be required to pass the preliminary examination hereinbefore required for admission to apprenticeship with a Land Surveyor, but shall only be bounden to serve under articles with a Land Surveyor, duly filed as required by the sixteenth section of this Act, during twelve successive months of actual practice, after which, on conforming with all the other requirements, he may undergo the examination by this Act prescribed. 40 V. c. 7, *Sched. A.* (165).

Graduates of Military College, Kingston.

**14.** If any Surveyor dies or leaves the Province, or is suspended or dismissed, his apprentice may complete his term of apprenticeship, under an instrument in writing as aforesaid, with any other Surveyor duly admitted. C. S. C. c. 77, s. 15.

If Surveyor dies, service may be completed with another Surveyor.



Instruments of apprenticeship may be transferred.

**15.** Any Surveyor may, by an instrument in writing as aforesaid, transfer an apprentice, with his own consent, to any other Surveyor duly admitted, with whom he may serve the remainder of the term of his apprenticeship. C. S. C. c. 77, s. 16.

Instruments binding to service to be filed, &c.

**16.** No instrument in writing under which any applicant for admission to practise as a Surveyor claims to have served with some practising Surveyor for the period of three years, six months, or twelve months (as the case may be), shall avail to authorize the admission of such applicant, unless such instrument, if executed before witnesses, has been transmitted to the Secretary of the Board before which the applicant is to be examined, within two months next after the date thereof, nor unless the fee mentioned in the twenty-fifth section of this Act was by the apprentice paid to the Secretary of the Board at the time of transmitting the indenture or articles; and the said Secretary shall acknowledge by post the receipt of all such instruments or copies thereof transmitted to him, and shall carefully keep the same in his office. C. S. C. c. 77, s. 12.

#### ADMISSION OF CANDIDATES.

The examination of candidates for admission.

**17.** Before any person is admitted to practise as a Land Surveyor, he shall be publicly examined with respect to his ability, and the sufficiency of his surveying instruments, by the said Board of Examiners. C. S. C. c. 77, s. 19; 40 V. c. 7, *Sched. A* (166).

Notice of examination to be given by candidates for admission.

**18.** Every person desiring to be examined before the said Board as to his qualification to be admitted as a Land Surveyor, shall give due notice thereof in writing to the Secretary of the Board, at least one month previous to the meeting thereof. C. S. C. c. 77, s. 18.

The Board to require certificates of good conduct, &c.

**19.** The said Examiners shall cause all persons applying for admission to practise as such Land Surveyors, to produce satisfactory certificates as to character for probity and sobriety, and to perform such practical operations in their presence as they may require, previous to their giving him their certificate, and to answer such questions on oath (which oath any one of the examiners may administer) with regard to the actual practice of such applicant in the field, and with regard to his surveying instruments. C. S. C. c. 77, s. 20.

If the examiners approve of the candidate they are to grant him certificate.

**20.** If the said Examiners are satisfied of his ability as hereinbefore provided, and of his having complied with all the requirements of this Act, and of the sufficiency of his surveying instruments, they shall give him a certificate thereof, and of his being admitted as a Land Surveyor, in the form following:

"This is to certify to all whom it may concern, that A. B., of \_\_\_\_\_ in the County of \_\_\_\_\_ has duly passed his examination before the Board of Examiners, and has been found

qualified to fill the office and perform the duties of a Provincial Land Surveyor in and for Ontario, he having complied with all the requirements of the law in that behalf. Wherefore the said A. B. is admitted to the said office, and is by law authorized to practise as a Land Surveyor in Ontario.

"In witness whereof, we have signed this certificate at the City of Toronto, in the County of York, and Province of Ontario,  
the day of  
one thousand eight hundred and ."

*Signature of the President, "C. D."*

*Signature of the Secretary, "E. F."*

And such certificate shall, on his complying with the other requirements of this Act, enable him to practise as a Land Surveyor in and for Ontario. C. S. C. c. 77, s. 21. The certificate shall entitle the party to practise.

**21.** Each applicant, after receiving the above mentioned certificate, shall, with two sufficient sureties to the satisfaction of the said Board of Examiners, enter into a bond jointly and severally in the sum of one thousand dollars, to Her Majesty, Her Heirs and Successors, conditioned for the due and faithful performance of the duties of his office. C. S. C. c. 77, s. 22. Licentiatees to give bonds and take the oaths of allegiance and of office.

**2.** The said bond shall be deposited and kept in the manner by law prescribed with regard to the bonds given for like purposes by other public officers, and shall enure to the benefit of any party sustaining damage by breach of the condition thereof; and the certificate shall be registered in the office of the Provincial Secretary. C. S. C. c. 77, s. 24. Where bonds to be deposited.

**22.** Each applicant, after receiving such certificate, shall also take and subscribe the oath of allegiance, and the following oath, before the Board of Examiners, who are hereby empowered to administer the same: Oaths.

"I, A. B. do solemnly swear (or affirm, as the case may be) that I will faithfully discharge the duties of Land Surveyor, agreeably to law, without favour, affection or partiality: So help me God."

C. S. C. c. 77, s. 22.

**2.** The said oath of allegiance and of office shall be deposited in the office of the Provincial Secretary. C. S. C. c. 77, s. 23; 40 V. c. 7, *Sched. A* (167). The oaths to be deposited.

**23.** The Board of Examiners may in their discretion suspend or dismiss from the practice of his profession, any Land Surveyor whom they find guilty of gross negligence or corruption in the execution of the duties of his office; but the Board shall not suspend or dismiss such Land Surveyor without having previously summoned him to appear in order to be When the Board may suspend licensed Surveyors.

heard on his defence, nor without having heard the evidence offered either in support of the complaint or in behalf of the Surveyor inculpated. C. S. C. c. 77, s. 25.

Fees to be paid  
to the mem-  
bers of the  
Boards.

**24.** The Commissioner of Crown Lands shall pay to each member of the Board of Examiners not being a salaried officer of the Government, who attends any examination, the sum of five dollars for each day's attendance, and charge the same in his account as part of the expenses of his office. C. S. C. c. 77, s. 26.

Tariff of Fees.

**25.** The following fees shall be paid under the provisions of this Act:

1. To the Secretary of the Board of Examiners, by each Apprentice, at the transmitting to such Secretary the Indenture or Articles of such Apprentice. .... \$2 00
2. To the Secretary of the Board by each Candidate for examination with his notice thereof ..... 1 00
3. To the Secretary of the Board by each applicant obtaining a Certificate, as his fee thereon ..... 2 00
4. To the Secretary of the Board as an admission fee by each applicant receiving a Certificate, out of which the expenses attending the examination of such applicant (if any) shall be first paid, and the remainder (if any) shall be paid over to the Commissioner of Crown Lands and be accounted for like other moneys received by him..... 20 00
5. To every Surveyor summoned to attend any Court, civil or criminal, for the purpose of giving evidence in his professional capacity as a Surveyor, for each day he so attends, in addition to his travelling expenses (if any), and to be taxed and paid in the manner by law provided with regard to the payment of witnesses attending such Court..... 4 00

C. S. C. c. 77, s. 108.

#### BOUNDARY LINES.

The establish-  
ment of bound-  
ary lines re-  
gulated.

**26.** All boundary or division lines legally established, and ascertained under the authority of any Ordinance or Act heretofore in force, shall remain good, and all other acts and things legally done and performed under the authority of the said Ordinance and Acts, or any of them, and in conformity to the provisions thereof, shall remain good and valid notwithstanding the repeal of such Ordinance or Act. C. S. C. c. 77, s. 27.

The standards  
of measure re-  
gulated.

**27.** The standard of English measure of length, compared with and corrected by the standards for such measures established in this Province, and procured by the Commissioner of Crown Lands for the purpose of comparing therewith the

standards to be kept by each Surveyor as hereinafter provided, shall be deposited with the Secretary of the Board of Examiners at Toronto, and the said Secretary, under such instructions as he from time to time receives from the Board, shall examine, test and stamp standard measures of length for the Surveyors, bringing the same for examination as the Commissioner of Crown Lands may do and with the same effect; and for each measure so examined and stamped such Secretary may demand and receive fifty cents. C. S. C. c. 77, s. 28.

**28.** Every Land Surveyor duly admitted and practising shall procure and shall cause to be examined, corrected and stamped or otherwise certified by the Commissioner of Crown Lands, or some one deputed by him for that purpose, or by the Secretary aforesaid, a standard measure of length, under the penalty of the forfeiture of his license or certificate, and shall, previously to proceeding on any survey, verify by such standard the length of his chains and other instruments for measuring. C. S. C. c. 77, s. 29.

**29.** Every chain-bearer shall, before he commences his chaining or measuring, take an oath or affirm to act as such justly and exactly according to the best of his judgment and abilities, and to render a true account of his chaining or measuring to the Surveyor by whom he has been appointed to such duty, and that he is absolutely disinterested in the survey in question, and is not related or allied to any of the parties interested in the survey within the fourth degree, according to the computation of the civil law—that is to say, within the degree of cousin-german, which oath the Surveyor employing such chain-bearer is hereby authorized and required to administer; nor shall any person related or allied to any of the parties within the said degree employed as a chain-bearer on any survey. C. S. C. c. 77, s. 30.

**30.** Any Land Surveyor, when engaged in the performance of the duties of his profession, may pass over, measure along and ascertain the bearings of any Township line, concession or range line or other Government line or side line, and for such purposes may pass over the lands of any person whomsoever, doing no actual damage to the property of such person. C. S. C. c. 77, s. 32.

**31.** Where any Surveyor is in doubt as to the true boundary or limit of any Township, concession, range, lot or tract of land which he is employed to survey, and has reason to believe that any person is possessed of any important information touching such boundary or limit, or of any writing, plan or document tending to establish the true position of such boundary or limit, then if such person does not willingly appear before and be examined by such Surveyor, or does not willingly

Surveyors to  
procure stamp-  
ed standard  
measures.

Chain-bearers  
to be sworn,  
and nature of  
the oath.

When Land  
Surveyors  
may pass over  
private lands.

The course to  
be adopted by  
Surveyors to  
ascertain  
boundary line,  
when doubtful  
etc.



May subpoena witnesses.

produce to him such writing, plan or document, such Surveyor or the party employing him may file in the office of the County Court a *præcipe* for a subpoena or subpoena *duces tecum*, as the case may require, accompanying such application by an affidavit or solemn declaration to be made before a Justice of the Peace, of the facts on which the application is founded, and the Judge may order a subpoena to issue accordingly, commanding such person to appear before the Surveyor, at a time and place to be mentioned in the said subpoena, and to bring with him any writing, plan or document mentioned or referred to therein. C. S. C. c. 77, s. 33.

How to be served.

**32.** Such subpoena shall be served on the person named therein by delivering a copy thereof to him, or by leaving the same for him with some grown person of his family at his residence, exhibiting to him or to such grown person the original. C. S. C. c. 77, s. 34.

Consequence of disobeying.

**33.** If the person commanded to appear by such subpoena after being paid his reasonable expenses, or having the same tendered to him, refuses or neglects to appear before the Surveyor at the time and place appointed in the subpoena, or to produce the writing, plan or document (if any) therein mentioned or referred to, or to give such evidence and information as he may possess touching the boundary or limit in question, the person so summoned shall be deemed guilty of a contempt of the Court out of which the subpoena issued, and an attachment may be issued against him by the Judge of the said Court, and he may be punished accordingly, by fine or imprisonment, or both, in the discretion of such Judge. C. S. C. c. 77, s. 35.

Witness liable to attachment

Stone monuments may be placed at certain points in townships.

**34.** Stone monuments, or monuments of other durable materials, shall be placed at the several corners, governing points or off-sets of every Township already surveyed, or after this Act takes effect from time to time surveyed, and also at each end of the several concession lines of such Townships; and lines drawn in the manner hereinafter prescribed from the monuments so erected, shall be taken and considered to be the permanent boundary lines of such Townships and concessions respectively. C. S. C. c. 77, s. 54; C. S. U. C. c. 93, s. 1.

To be placed under the direction of the Commissioner of Crown Lands.

**35.** The monuments to be placed as above mentioned shall be so placed under the direction and order of the Commissioner of Crown Lands. C. S. C. c. 77, s. 55; C. S. U. C. c. 93, s. 2.

Boundaries ascertained as aforesaid to be deemed the true ones.

**36.** The courses and lengths of the said boundary lines, so ascertained and established, shall on all occasions be the true courses and lengths of the boundary lines of the said Townships and concessions, whether the same do or do not, on actual survey, coincide with the course and lengths in any letters patent of grant or other instrument mentioned and

expressed in respect of such boundary lines. C. S. C. c. 77, s. 56; C. S. U. C. c. 93 s. 3.

**37.** It shall not be necessary for the Commissioner of Crown Lands to proceed to carry the provisions of the three last preceding sections of this Act into execution, until an application for that purpose has been made to the Lieutenant-Governor, by the Council of the County in which the Township or Townships interested is situate, and such Council shall cause the sum requisite to defray the expenses to be incurred, or the proportion thereof payable by the inhabitants of any Township or concession, to be levied on the said inhabitants, in the same manner as any sum required for any other local purpose authorized by law may be levied. C. S. C. c. 77, s. 57; C. S. U. C. c. 93, s. 5.

Monuments not to be placed under ss. 34-36 except on the application of the Municipal Council.

**38.** And whereas in several of the Townships in Ontario some of the concession lines, or parts of the concession lines, were not run in the original survey performed under competent authority, and the surveys of some concession lines or parts of concession lines have been obliterated, and owing to the want of such lines the inhabitants of such concessions are subject to serious inconvenience: therefore the County Council of the County in which any Township is situate, may, on application of one-half of the resident landholders in any concession, or without such application, make application to the Lieutenant-Governor, requesting him to cause any such line to be surveyed, and marked by permanent stone boundaries under the direction and order of the Commissioner of Crown Lands, in the manner prescribed in this Act, at the cost of the proprietors of the lands in each concession or part of a concession interested. C. S. C. c. 77, s. 58; C. S. U. C. c. 93, s. 6. *See also Rev. Stat. c. 174, s. 462.*

In what cases the Municipal Council may apply to have monuments placed.

**39.** The lines shall be so drawn as to leave each of the adjacent concessions of a depth proportionate to that intended in the original survey. C. S. C. c. 77, s. 59; C. S. U. C. c. 93, s. 7.

As to the adjacent concessions.

**40.** The lines or parts of lines so surveyed and marked as aforesaid, shall thereafter be the permanent boundary lines of such concessions or parts of concessions to all intents and purposes of law whatsoever. C. S. C. c. 77, s. 60; C. S. U. C. c. 93, s. 8.

To be permanent boundary lines.

**41.** The Council shall cause to be laid before them an estimate of the sum requisite to defray the expenses to be incurred in order that the same may be levied on the said proprietors, in proportion to the quantity of land held by them respectively in each concession or part of a concession, in the same manner as any sum required for any other purposes authorized by law may be levied. C. S. C. c. 77, s. 61; C. S. U. C. c. 93, s. 9.

Expenses to be estimated and provided for.

Expenses how paid.

**42.** All expenses incurred in performing any survey, or placing any monument or boundary under the provisions of the thirty-fourth and following sections, shall be paid by the County Treasurer to the person or persons employed in such services, on the certificate and order of the Commissioner of Crown Lands. C. S. C. c. 77, s. 62; C. S. U. C. c. 93, s. 10.

Municipal Councils may cause the boundaries of lots in any concession, &c., to be ascertained and marked.

**43.** Whenever the Municipal Council of any Township, City, Town or incorporated Village adopts a resolution, on application of one-half the resident landholders to be affected thereby, that it is desirable to place stone or other durable monuments at the front or at the rear, or at the front and rear angles of the lots in any concession or range or part of a concession or range in their Township, City, Town or incorporated Village, such Municipal Council may make application to the Lieutenant-Governor, in the same manner as is provided in the thirty-eighth, and two following sections of this Act, praying him to cause a survey of such concession or range, or part of a concession or range, to be made, and such boundaries to be planted, under the authority of the Commissioner of Crown Lands. C. S. C. c. 77, s. 63; C. S. U. C. c. 93, s. 11.

To be marked by stone or some other durable monuments to be placed at the angles.

**44.** The person or persons making such survey shall accordingly plant stone or other durable monuments at the front, or at the rear, or at the front and rear angles of each and every lot in such concession or range, or part of a concession or range, and the limits of each lot so ascertained and marked shall be the true limits thereof. C. S. C. c. 77, s. 64; C. S. U. C. c. 93, s. 12.

How cost to be defrayed.

**45.** The cost of such survey shall be defrayed in the manner prescribed by the forty-first and forty-second sections of this Act. C. S. C. c. 77, s. 65; C. S. U. C. c. 93, s. 13.

Boundaries placed under the authority of the Government to be deemed the true ones, &c.

**46.** All boundary lines of Townships, Cities, Towns and Villages, all concession lines, governing points, and all boundary lines of concessions, sections, blocks, gores and commons, and all side lines and limits of lots surveyed, and all posts or monuments, marked, placed or planted at the front angles of any lots or parcels of land, under the authority of the Executive Government of the late Province of Quebec or of Upper Canada or of Canada, or under the authority of the Executive Government of this Province, shall be the true and unalterable boundaries of all and every such Townships, Cities, Towns, Villages, concessions, sections, blocks, gores, commons, and lots or parcels of land, respectively, whether the same upon admeasurement be found to contain the exact width, or more or less than the exact width mentioned or expressed in any letters patent, grant or other instrument in respect of such Township, City, Town, Village, concession, section, block, gore, common, lot or parcel of land. C. S. C. c. 77 s. 66; C. S. U. C. c. 93, s. 14.

**47.** Every Township, City, Town, Village, concession, section, block, gore, common, lot or parcel of land, shall embrace the whole width, contained between the front posts, monuments or boundaries, planted or placed at the front angles thereof respectively, so marked, placed or planted as aforesaid, and no more nor less, any quantity or measure expressed in the original grant or patent thereof notwithstanding. C. S. C. c. 77, s. 67; C. S. U. C. c. 93, s. 15.

Townships, &c., to comprise all the space included within their boundaries.

**48.** Every patent, grant or instrument, purporting to be for any aliquot part of any such Township, City or Town, Village, concession, section, block, gore, common, lot or parcel of land, shall be construed to be a grant of such aliquot part of the quantity the same may contain, whether such quantity be more or less than that expressed in such patent, grant or instrument. C. S. C. c. 77, s. 68; C. S. U. C. c. 93, s. 16.

As to aliquot parts of townships, etc.

**49.** In every City, Town or Village, which has been surveyed by the authority aforesaid, all allowances for any road, street, lane or common laid out in the original survey of such City, Town or Village, shall be public highways and commons; and all posts or monuments placed or planted in the original survey of such City, Town or Village, to designate or define any allowance for a road, street, lane, lot or common, shall be the true and unalterable boundaries of every such road, street, lane, lot and common; and all Land Surveyors, employed to make surveys in such City, Town or Village shall follow and pursue the same rules and regulations in respect of such surveys as is by law required of them when employed to make surveys in Townships. C. S. C. c. 77, s. 69; C. S. U. C. c. 93, s. 17.

Road allowances in cities, etc., to be public highways.

**50.** Whereas many Townships, tracts or blocks of land in this Province, were granted by the Crown to companies and individuals before any surveys had been made therein, and such Townships, tracts or blocks of land were afterwards surveyed by the owners thereof: all such surveys of such Townships, tracts or blocks of land, shall be original surveys thereof, and shall have the same force and effect as though the said original surveys and plans thereof had been made by the authority aforesaid: and all allowances for roads or commons surveyed in such Townships, tracts or blocks of land and laid down on the plans thereof, shall be public highways and commons; and all lines run and marked in such original surveys, and all posts or monuments planted or placed in such original surveys, to designate and define any allowance for road, concession, lot of land or common, shall be the true and unalterable lines and boundaries of such allowance for road common or lot of land, and all Land Surveyors, when employed to make surveys in such Townships, tracts or blocks of land, shall follow and pursue the same rules and regulations in respect of such Townships, tracts or blocks of land and the original

Residual.

As to lands granted in blocks and subsequently surveyed by the grantees.



surveys thereof, as they are by law required to follow and pursue in all Townships, tracts or blocks of land surveyed by the authority aforesaid. C. S. C. c. 77, s. 70; C. S. U. C. c. 93, s. 18.

Governing  
lines declared.

**51.** The course of the boundary line of each and every concession, on that side from which the lots are numbered, shall be the course of the division or side-lines throughout the several Townships or concessions respectively, provided that such division or side-lines were intended, in the original survey performed under such authority as aforesaid, to run parallel to the said boundary. C. S. C. c. 77, s. 71; C. S. U. C. c. 93, s. 19.

All side lines  
to be run  
parallel to  
governing  
lines.

**52.** Every Surveyor shall run all division or side-lines, which he is called upon by the owner or owners of any lands to survey, so as to correspond with and be parallel to that boundary line of the concession in which such lands are situate, from whence the lots are numbered as aforesaid, provided such division or side-lines were intended, in the original survey performed under such competent authority as aforesaid, to run parallel to the said boundary, C. S. C. c. 77, s. 72; C. S. U. C. c. 93, s. 20.

Course to be  
adopted where  
concession  
bounded by  
lakes or rivers.

**53.** Where that end of a concession, from which the lots are numbered, is bounded by a lake or river, or other natural boundary, or where it has not been run in the original survey performed under competent authority as aforesaid, or where the course of the division or side-lines of the lots therein was not intended in the original survey performed as aforesaid, to run parallel to such boundary, the said division or side-lines shall run parallel to the boundary-line at the other extremity of such concession, provided their course was intended, in the original survey performed as aforesaid, to be parallel thereto, and that such boundary-line was run in the original survey. C. S. C. c. 77, s. 73; C. S. U. C. c. 93, s. 21.

Where division  
or side-lines  
not intended  
to run parallel  
to the side-  
lines at either  
end of a con-  
cession.

**54.** Where in the original survey, performed under competent authority as aforesaid, the course of the division or side-lines in any concession was not intended to be parallel to the boundary-line at either end of such concession, they shall be run at such angle with the course of the boundary-line at that end of the concession from which the lots are numbered, as is stated in the plan and field-notes of the original survey, of record in the office of the Commissioner of Crown Lands, provided such line was run in the original survey as aforesaid, or with the course of the boundary-line at the other extremity of the said concession, if the boundary at that end of the concession from which the lots are numbered was not run in the original survey; or if neither of the aforesaid boundaries of the concession was run in the original survey, or if the concession is bounded at each end by a lake or river, or other natural boundary, then at such angle with the course of the line in

front of the said concession as is stated in the plan and field-notes aforesaid. C. S. C. c. 77, s. 74; C. S. U. C. c. 93, s. 22.

**55.** If any division or side-line between lots, or proof-line intended to be parallel to the division or side-lines between lots, was drawn in any such concession in the original survey thereof, the division or side-lines between the lots therein shall be drawn parallel to such division or side-line or proof-line. Where a division or proof line has been run between lots, the same shall govern. C. S. C. c. 77, s. 75; C. S. U. C. c. 93, s. 23.

**56.** Where two or more such division or side-lines or proof-lines were drawn in the original survey of such concession, that division or side-line or proof-line which is nearest to the boundary of the concession from which the lots are numbered, shall govern the course of the division or side-lines of all the lots in such concession between the boundary of the concession from which the lots are numbered, and the next division or side-line or proof-line drawn in the original survey; and such last mentioned line or proof-line shall govern the course of the division or side-lines of all the lots up to the next division or side-line or proof-line drawn in the original survey, or to the boundary of the concession towards which the lots are numbered, as the case may be. C. S. C. c. 77, s. 76; C. S. U. C. c. 93, s. 24. Where there are two of such lines, the line nearest the end of the concession, from which the lots are numbered, to govern to the next of such lines.

**57.** In all those Townships which in the original survey were divided into sections, agreeably to an Order in Council bearing date the twenty-seventh day of March, one thousand eight hundred and twenty-nine, the division or side-lines in all concessions, in any section, shall be governed by the boundary-lines of such section, in like manner as the division or side-lines in Townships originally surveyed before the said day, are governed by the boundary-lines of the concession in which the lots are situate. C. S. C. c. 77, s. 77; C. S. U. C. c. 93, s. 25. How lines to be governed in townships laid out in sections under the O.C. of the 27th March, 1829.

**58.** The front of each concession in any Township, where only a single row of posts has been planted on the concession-lines, and the lands have been described in whole lots, shall be that end or boundary of the concession which is nearest to the boundary of the Township from which the several concessions thereof are numbered; and when the line in front of any such concession was not run in the original survey, the division or side-lines of the lots in such concession shall be run from the original posts or monuments placed or planted on the front-line of the concession in the rear thereof, parallel to the governing-line determined as aforesaid, to the depth of the concession, that is, to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth, or, if they were not so intended, then to the proportionate depth intended in the original survey, as shown on the plan and field-notes thereof of record in the office of the Commissioner What shall be deemed the front of a concession in certain cases.

of Crown Lands, having due respect to any allowance for a road or roads made in the original survey; and a straight line joining the extremities of the division or side-lines of any lot in such concession, drawn as aforesaid, shall be the true boundary of that end of the lot which was not run in the original survey. 32 V. c. 38, s. 2.

In Townships  
fronting on a  
river or lake,  
how division  
lines to be  
drawn if no  
posts planted  
to mark the  
width of lots.

**59.** In those Townships which are bounded in front by a river or lake, where no posts or other boundaries were planted in the original survey on the bank of such river or lake to regulate the width in front of the lots in the broken front concessions, the division or side-lines of the lots in such broken front concessions shall be drawn from the posts or other boundaries on the concession-line in rear thereof, parallel to the governing-line, determined as aforesaid, to the river or lake in front. 32 V. c. 38, s. 3.

Fronts of con-  
cessions in cer-  
tain other  
cases, depths  
of lots, etc.

**60.** In those Townships in which the concessions have been surveyed with double fronts, that is, with posts or monuments planted on both sides of the allowances for roads between the concessions, and the lands have been described in half lots, the division or side-lines shall be drawn from the posts at both ends to the centre of the concession, and each end of such concession shall be the front of its respective half of such concession, and a straight line joining the extremities of the division or side-lines of any half lot in such concession, drawn as aforesaid, shall be the true boundary of that end of the half lot which has not been bounded in the original survey. C. S. C. c. 77, s. 80; C. S. U. C. c. 93, s. 28.

Mode of draw-  
ing lines in  
double fronted  
concessions.

**61.** And whereas some of the double front concessions are not of the full depth, and doubts have arisen as to the manner in which the division or side-lines in such concessions should be established:—Therefore in such concessions the division or side-lines shall be drawn from the posts at both ends thereof, to the centre of the concession, as provided in the last preceding section of this Act, without reference to the manner in which the lots or parts of lots in such concession have been described for patent. C. S. C. c. 77, s. 81; C. S. U. C. c. 93, s. 29.

As to conces-  
sions in cases  
where alter-  
nate conces-  
sion lines only  
have been run.

**62.** In those Townships in which each alternate concession line only has been run in the original survey, but with double fronts as aforesaid, the division or side-lines shall be drawn from the posts or monuments on each side of such alternate concession lines to the depth of a concession—that is, to the centre of the space contained between such alternate concession lines, if the concessions were intended in the original survey to be of an equal depth, or if they were not so intended, then to the proportionate depth intended in the original survey, as shown on the plan and field-notes thereof of record in the office of the Commissioner of Crown Lands; and each alter-

nate concession line as aforesaid shall be the front of each of the two concessions abutting thereon. C. S. C. c. 77, s. 82; C. S. U. C. c. 93, s. 30.

**63.** In all cases where any Crown patent of grant, or other instrument, has been issued for several lots or parcels of land in concessions adjoining each other, the side-lines or limits of the lots or parcels of land therein mentioned and expressed, shall commence at the front angles of such lots or parcels of land respectively, and shall be run as hereinbefore provided, and shall not continue on in a straight line through several concessions, unless the side-lines or limits, when run as aforesaid, intersect the corresponding post or monument in the front of the concession next in rear—that is to say, each lot or parcel of land shall be surveyed and bounded according to the provisions of this Act, independently of the other lots or parcels mentioned in the same grant or instrument. C. S. C. c. 77, s. 83; C. S. U. C. c. 93, s. 31.

As to lands in adjoining concessions included in the same grant.

**64.** Every Land Surveyor employed to run any division-line or side-line between lots, or any line required to run parallel to any division-line or side-line in the concession in which the land to be surveyed lies, shall, if it has not been done before, or if it has been done but the course cannot at such time be ascertained, determine by astronomical observation the true course of a straight line between the front and rear ends of the governing boundary-line of the concession or section, and shall run such division-line or side-line as aforesaid, truly parallel to such straight line, if so intended in the original survey, or at such angle therewith as is stated in the plan and field-notes as aforesaid, which shall be deemed to be the true course of the said governing or boundary line for all the purposes of this Act, although such governing or boundary line as marked in the field be curved or deviate otherwise from a straight course; and the same rule shall be observed, if a line is to be run at any angle, with a front line or other line, which is not straight. C. S. C. c. 77, s. 84; C. S. U. C. c. 93, s. 32.

Rule when a line is to be drawn parallel to a governing line.

**65.** In all cases where any Land Surveyor is employed to run any side-line or limits between lots, and the original post or monument from which such line should commence cannot be found, he shall obtain the best evidence that the nature of the case admits of, respecting such side-line, post or limit; but if the same cannot be satisfactorily ascertained, then the surveyor shall measure the true distance between the nearest undisputed posts, limits or monuments, and divide such distance into such number of lots as the same contained in the original survey, assigning to each a breadth porportionate to that intended in such original survey, as shown on the plan and field notes thereof, of record in the office of the Commissioner of Crown Lands; and if any portion of the line in front of the concession in which such lots are situate, or boundary of the

cases where the original post or monument cannot be found, provided for.



Township in which such concession is situate, has been obliterated or lost, then the Surveyor shall run a line between the two nearest points or places where such line can be clearly and satisfactorily ascertained, in the manner provided in this Act, and shall plant all such intermediate posts or monuments as he may be required to plant, in the line so ascertained, having due respect to any allowance for a road or roads, common or commons, set out in such original survey; and the limits of each lot so found shall be the true limits thereof. C. S. C. c. 77, s. 85; C. S. U. C. c. 93, s. 33.

If side-lines were drawn in original survey, the same to be adhered to.

**66.** In those Townships in which the side-lines of the lots were drawn in the original survey, every Provincial Land Surveyor when called upon to determine any disputed boundary in any of such Townships, shall ascertain and establish the division or side-lines of the lots, by running such side-lines as they were run in the original survey whether the same were in the original survey run from the front of the concession to the rear, or from the rear of the concession to the front, and shall adhere to all posts, limits or monuments, planted on the division or side-lines in the original survey, as being or designating corners of lots under such original survey. C. S. C. c. 77, s. 86; C. S. U. C. c. 93, s. 34.

As to allowances for roads or streets in Towns or Villages laid out by private owners.

**67.** And whereas Towns and Villages in Ontario have been or may be surveyed and laid out by companies and individuals, and by different owners of the lands comprising the same, and lands have been or may be sold therein according to the surveys and plans thereof: therefore all allowances for roads, streets or commons, which have been surveyed in such Towns and Villages and laid down on the plans thereof, and upon which lots of land fronting on or adjoining such allowances for roads, streets, or commons have been or may be sold to purchasers, shall be public highways, streets, and commons; and all lines which have been or may be run, and the courses thereof given in the survey of such Towns and Villages, and laid down on the plans thereof, and all posts or monuments which have been or may be placed or planted in the first survey of such Towns and Villages to designate or define any such allowances for roads, streets, lots or commons, shall be the true and unalterable lines and boundaries thereof respectively. C. S. C. c. 77, s. 87; C. S. U. C. c. 93, s. 35.

No private survey valid unless made by a licensed Surveyor.

**68.** No such private survey shall be valid unless performed by a duly authorized Surveyor. C. S. C. c. 77, s. 90; C. S. U. C. c. 93, s. 38.

Town or village lots not to be laid out so as to interfere with any allowance for roads.

**69.** No lot or lots of land in such Towns and Villages shall be so laid out as to interfere with, obstruct, shut up, or be composed of any part of any allowance for road, common or commons, which were surveyed and reserved in the original survey of the Township or Townships wherein such Towns or Villages

are or may be situate. C. S. C. c. 77, s. 88 ; C. S. U. C. c. 93, s. 36.

70. Wherever any land or original Town or Township lot has been surveyed or sub-divided into Town or Village lots, or other lots so differing from the manner in which such land or lot was surveyed or granted by the Crown, that the same can not or is not, by the description given of it, easily and plainly to be identified, the person, corporation or company making such survey or sub-division, their heirs, executors, administrators or assigns, agents, attorneys or successors, shall within three months from the date of every such survey or sub-division, lodge with the Registrar of the County or other Registration Division in which the lands are situate a plan or a map of the same, on a scale of not less than one inch to every four chains, shewing the number of the Township or Town lots, and Range or Concession, the numbers or letters of Town or Village lots, and names of streets, with the astronomical or magnetic bearing of the same, and showing thereon all roads, streets, lots and commons within the same, with the courses and widths thereof respectively, and the width and length of all lots, and the courses of all division lines between the respective lots within the same, together with such information as will show the lots, concessions, tracts or blocks of land of the Township wherein the same is situate.

Registration of plans of division of lands into smaller parcels.

Scale of plan, and what to shew.

2. Every such map or plan shall, before being registered, be signed by the person or the chief officer of the corporation by whom or on whose behalf the same is filed, and certified by some Provincial Land Surveyor in the form of Schedule L. to "*The Registry Act*," and thenceforward the Registrar shall keep an index of the lands described and designated by any number or letter on such map or plan, by the name by which such person, corporation or company designates the same in the manner provided by this Act ; and all instruments affecting the land or any part thereof, executed after such plan is filed with the Registrar shall conform thereto, otherwise they shall not be registered.

Duty of Registrars thereafter.

Rev. Stat. c. 111.

Instruments must conform to such plan.

3. In the case of refusal by such person, corporation or company, his or their executors, agents, or attorneys, or successors, for two months after demand in writing for that purpose, to lodge the said plan or map when required by any person interested therein, or by the Inspector, so to do, he or they shall incur a penalty of twenty dollars for each and every calendar month the said map or plan remains unregistered, which penalty may be recovered by any person complaining, in any Division Court in the County in which such lands are situated, in like manner as a common debt.

Penalty for refusing such plan.

How recovered.

4. This section shall apply as well to lands already surveyed or subdivided as to those which may hereafter be surveyed or subdivided, subject to the next succeeding section. 31 V. c. 20,

To what land this section applies.

s. 75; 35 V. c. 29, s. 1; 39 V. c. 7, s. 15. *See also Rev. Stat. c. 111, s. 82.*

When plan must be registered in case of lands subdivided before this Act.

**71.** In sales of lands under surveys or sub-divisions made before the fourth day of March, eighteen hundred and sixty-eight, where such surveys or sub-divisions so differ from the manner in which such land was surveyed or granted by the Crown that the parcel so sold cannot be easily identified, the plan or survey shall be registered within six months after the passing of this Act, if the plan or survey is still in existence and procurable for registration and filing under the next preceding section, and if it is not, a new survey or plan shall be made by and at the joint expense of the persons who have made such surveys or sub-divisions, and of all others interested therein, by some duly authorized Provincial Land Surveyor, as nearly as may be according to the proper original survey or sub-division, and the same when so made shall be filed as if under the next preceding section of this Act. 31 V. c. 20, s. 76. *See also Rev. Stat. c. 111, s. 83.*

When surveys or plans may be altered.

**72.** Wherever a survey has been made and a map or plan thereof registered as aforesaid, the owner of the land may cause a new survey and plan thereof, altering or wholly or partially cancelling and making void the former survey and plan thereof, and the division of the land thereby into lots and allowances for roads, streets and commons, to be made, certified, deposited and registered as aforesaid; and thereupon such former survey and plan shall be altered, or wholly or partially cancelled, and made void accordingly. 24 V. c. 49, s. 1.

Proviso as to streets.

**2.** No part of any street or streets shall be altered or closed up, upon which any lot of land sold abuts, or which connects any such sold lot with or affords means of access therefrom to the nearest public highway.

**3.** Nothing herein shall in any way interfere with the powers now possessed by Municipalities in reference to highways. 24 V. c. 49, s. 1.

Copies of registered plans, evidence to be of the originals.

**73.** Every copy of such plan or map obtained from such Registry Office, and, certified as correct by the Registrar or Deputy Registrar as aforesaid shall be taken in all Courts as evidence of the original thereof and of the survey of which it purports to be a plan or map. C. S. C. c. 77, s. 93; C. S. U. C. c. 93, s. 41.

Duty of the Registrar in whose office any such plan is deposited.

**74.** Whenever any such plan or map has been so made and deposited as aforesaid the Registrar shall make a record of the same, and enter the day and year on which the same is deposited in his office; and for such service the said Registrar shall be entitled to charge the same fees, as by law are established for making a record of any other document, which is by law required to be entered of record in his office, but no higher fees. C. S. C. c. 77, s. 94; C. S. U. C. c. 93, s. 42.

**75.** Whereas there are many unincorporated Villages of Recital. which no plan or map has been deposited pursuant to law in the Registry Office of the County or other Registration Division within which the same are respectively situate, in consequence of the several original owners of the lands comprising the said Villages either not having jointly laid out and surveyed the same, or because some of the original owners left no legal representatives.

Therefore, in each and every case where an unincorporated Village comprises different parcels of land, owned at the original division thereof by two or more persons, and the same was not jointly surveyed and laid out into a Village plot, and where in such case no entire plan or map of the said Village has been deposited with the Registrar of the County within which the same is situate, the Municipality of the Township within which the said Village is situate shall immediately cause a plan or map of such Village to be made on the scale now required by law, and deposited in the Registry Office of the Registration Division within which the said Village is situate; and the expense attending the getting up of the map and depositing it as aforesaid shall be paid out of the general funds of the Municipality, or by a local tax upon the ratepayers of the Village. C. S. C. c. 77, s. 100; C. S. U. C. c. 93, s. 48.

Where no plan of an unincorporated Village has been registered, Township Council to cause one to be made.

Cost, how paid.

**76.** Every Land Surveyor shall keep exact and regular journals and field-notes of all his surveys, and file them in the order of time in which the surveys have been performed, and shall give copies thereof to the parties concerned when so required, for which he is hereby allowed the sum of one dollar for each copy, if the number of words therein does not exceed four hundred words, but if the number of words exceeds four hundred, he is allowed ten cents additional for every hundred words over and above four hundred words. C. S. C. c. 77, s. 101; C. S. U. C. c. 93, s. 49.

Surveyors to keep regular journals and field-notes and furnish copies to parties interested.

**77.** For better ascertaining the original limits of any Township, concession, range, lot, or tract of land, every Land Surveyor acting in this Province, shall and may administer an oath or oaths to each and every person whom he examines concerning any boundary, post or monument, or any original landmark, line, limit or angle of any Township, concession, range, lot or tract of land which such Surveyor is employed to survey. C. S. C. c. 77, s. 102; C. S. U. C. c. 93, s. 50.

Surveyors may administer oaths for certain purposes.

**78.** All evidence taken by any Surveyor as aforesaid shall be reduced to writing, and shall be read over to the person giving the same, and be signed by such person, or, if he cannot write, he shall acknowledge the same as correct before two witnesses, who, as well as the Surveyor, shall sign the same; and

Evidence taken by Surveyor to be reduced to writing and signed, etc.



Fees.

such evidence shall, and any document or plan prepared and sworn to as correct before a Justice of the Peace, by any Surveyor, with reference to any survey by him performed may be filed and kept in the Registry Office of the County or other Registration Division in which the lands to which the same relates are situate, subject to be produced thereafter in evidence in any Court of Law or Equity within Ontario; and for receiving and filing the same, the Registrar shall be entitled to twenty-five cents; and the expense of filing the same shall be borne by the parties in the same manner as other expenses of the survey. C. S. C. c. 77, s. 103; C. S. U. C. c. 93, s. 51.

*[Section 31 of C. S. C. c. 77, is as follows:*

Penalty for obstructing Land Surveyors in the execution of surveys.

31. If any person or persons, in any part of this Province, interrupts, molests or hinders any Land Surveyor, while in the discharge of his duty as a Surveyor, such person or persons shall be guilty of a misdemeanor, and being thereof lawfully convicted in any Court of competent jurisdiction, shall be punished either by fine or imprisonment, or both, in the discretion of such Court, such imprisonment being for a period not exceeding two months, and such fine not exceeding twenty dollars, without prejudice to any civil remedy which such Surveyor or any other party may have against such offender or offenders, in damages by reason of, such offence. 12 V. c. 35, s. 14.]

*[Section 4 of C. S. U. C. c. 93, is as follows:*

Punishments of persons removing or destroying landmarks.

4. If any person knowingly and wilfully pulls down, defaces, alters or removes any monument so erected as aforesaid, such person shall be adjudged guilty of felony; and if any person knowingly and wilfully defaces, alters or removes any other landmark, post or monument placed by any Land Surveyor, to mark any limit, boundary, or angle of any Township, concession, range, lot, or parcel of land, in Upper Canada, such person or persons shall be deemed guilty of a misdemeanor, and being convicted thereof before any competent Court, shall be liable to be punished by fine or imprisonment, or both, at the discretion of such Court, such fine not to exceed one hundred dollars, and such imprisonment not to be for a longer period than three months, without any prejudice to any civil remedy which any party may have against such offender or offenders in damages by reason of such offence; But this shall not extend to prevent Land Surveyors, in their operations, from taking up posts or other boundary marks when necessary, after which they shall carefully replace them as they were before. 12 V. c. 35, s. 29.

As to Surveyors.

*Section 107 of C. S. C. c. 77, contains the same provision.]*

## 9. *Miscellaneous.*

CHAP. 147.—Innkeepers, p. 1295.  
 “ 148.—Pawnbrokers, p. 1297.

## CHAPTER 147.

### An Act to amend the Law respecting the Rights and Liabilities of Innkeepers.

Interpretation, s. 1.	property beyond \$40, s. 3.
Lien of innkeeper, &c., on baggage of guest, s. 2.	Refusal to take charge of goods, s. 4.
Liability of innkeeper for loss of	Notice of provisions of this Act to be posted, s. 5.

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### 1. In the construction of this Act—

Interpretation

(1.) “Inn” shall include an hotel, inn, tavern, public-house or “Inn.” other place of refreshment, the keeper of which is now by law responsible for the goods and property of his guests; and

(2.) “Innkeeper” shall mean the keeper of any such place. “Innkeeper.” 37 V. c. 11, s. 5.

**2.** Every innkeeper, boarding-house keeper and lodging-house keeper shall have a lien on the baggage and property of his guest, boarder or lodger, for the value or price of any food or accommodation furnished to such guest, boarder or lodger, and, in addition to all other remedies provided by law, shall have the right, in case the same remains unpaid for three months, to sell by public auction the baggage and property of such guest, boarder or lodger, on giving one week's notice by advertisement in a newspaper published in the Municipality in which such inn, boarding-house, or lodging-house is situate, or in case there is no newspaper published in such Municipality, in a newspaper published nearest to such inn, boarding-

Lien on baggage, etc., for accommodation, etc., furnished, and power to sell.

house, or lodging-house, of such intended sale, stating the name of the guest, boarder or lodger, the amount of his indebtedness, a description of the baggage or other property to be sold, the time and place of sale, and the name of the auctioneer; and after such sale such innkeeper, boarding-house keeper, or lodging-house keeper may apply the proceeds of such sale in payment of the amount due to him, and the costs of such advertising and sale, and shall pay over the surplus (if any) to the person entitled thereto, on application being made by him therefor. 37 V. c. 11, s. 1.

Innkeeper not liable for loss of goods and property of guest beyond \$40, unless lost,

3. No innkeeper shall be liable to make good to any guest of such innkeeper, any loss of or injury to goods or property brought to his inn (not being a horse or other live animal, or any gear appertaining thereto, or any carriage), to a greater amount than the sum of forty dollars, except in the following cases, that is to say :

by his wilful default.

(a.) Where such goods or property have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper, or any servant in his employ ;

or unless deposited with him for safe keeping.

(b.) Where such goods or property have been deposited expressly for safe custody with such innkeeper ;

2. In case of such deposit, it shall be lawful for such innkeeper, if he thinks fit, to require as a condition of his liability that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same. 37 V. c. 11, s. 2.

Liability for refusal to take charge of goods.

4. If any innkeeper refuses to receive for safe custody, as before mentioned, any goods or property of his guest, or if any such guest, through any default of such innkeeper, is unable to deposit such goods or property as aforesaid, said innkeeper shall not be entitled to the benefit of this Act in respect of such goods or property. 37 V. c. 11, s. 3.

Notice of law, etc., to be conspicuously exhibited.

5. Every innkeeper shall cause to be kept conspicuously posted in the office, and public rooms, and in every bedroom in his inn, a copy of the third section of this Act, printed in plain type ; and he shall be entitled to the benefit of the said section in respect of such goods or property only as are brought to his inn while such copy is so posted. 37 V. c. 11, s. 4.

## CHAPTER 148.

## An Act respecting Pawnbrokers and Pawnbroking.

Interpretation, s. 1.	Refusal to deliver goods on redemption, s. 22.
License of pawnbroker, ss. 2-6.	Holder of memorandum entitled to goods, s. 23.
Signs to be exhibited, ss. 7-9.	Proceedings on notice not to deliver, s. 24.
Rates of interest, C. S. C. c. 61, s. 10-14, p. 1298.	Sale of unredeemed goods, ss. 25-33.
Rates to be exhibited, s. 10.	Restrictions on pawnbrokers, s. 34.
Books to be kept, ss. 11-12.	When goods lost or impaired in value—proceedings, ss. 35-38.
Memorandum to pawnor, ss. 13-16.	Prosecutions, ss. 39-44.
Pawning goods of others or goods partly manufactured, ss. 17-20.	Liability of executors of pawnbroker, &c., s. 41.
Concealment of such goods, s. 21.	
Other offences, C. S. C. c. 61, ss. 24-27, p. 1300.	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Every person who takes or receives, by way of pawn Pawnbroker, defined. pledge or exchange, any goods for the repayment of money lent thereon, shall be deemed a pawnbroker within the meaning of this Act. C. S. C. c. 61, s. 6.

2. Every person exercising the trade of a pawnbroker in this Province shall take out a license, under the hand of the Pawnbrokers to be licensed. Lieutenant-Governor, to be issued by the Provincial Treasurer, and shall renew the same annually. C. S. C. c. 61, s. 1.

3. In case any pawnbroker neglects to take out or renew Penalty for neglect. such license, he shall forfeit two hundred dollars for every pledge he takes without such license, to be recovered in any of Her Majesty's Courts. C. S. C. c. 61, s. 2.

4. The sum of sixty dollars for every such license shall be Fee for license. paid into the office of the Provincial Treasurer, and form part of the Consolidated Revenue Fund. C. S. C. c. 61, s. 3.

5. No person shall, by virtue of one license, keep more than A single license. one house or shop, or place for taking in goods to pawn. C. S. C. c. 61, s. 4.

6. Any number of persons carrying on trade as pawnbrokers, Partners. in partnership in the same house, shop or place need only take out a license for one house. C. S. C. c. 61, s. 5.



To exhibit a sign.

7. Every pawnbroker shall have a sign, with his name and the word "*Pawnbroker*" in large legible characters thereon, placed over the door outside of the shop, or other place used by him for carrying on business. C. S. C. c. 61, s. 7.

Penalty for neglect.

8. In case any pawnbroker neglects to have such sign so placed, he shall forfeit forty dollars for every shop or place made use of for one week without having the same so put up, to be recovered, with costs, on the oath of one witness, before any two Justices of the Peace; and if not forthwith paid upon conviction, the same may, by warrant under the hands and seals of two Justices of the Peace, be levied by distress and sale of the offender's goods, and one half of the penalty shall be paid to the informer, and the other half to the Crown. C. S. C. c. 61, s. 8.

If no distress may be committed.

9. If there is not a sufficient distress, or payment is not forthwith made, the offender shall be committed to the County or District Gaol, for a term not exceeding three months nor less than fourteen days, unless the penalty and reasonable charges are sooner paid. C. S. C. c. 61, s. 9.

*[Sections 10 to 14 of C. S. C. c. 61, regulating the rate of interest which pawnbrokers may take, are as follows:]*

Pawnbrokers' rates.

10. Every pawnbroker may take the following rates above the principal sum advanced, before he is obliged to redeliver the goods pawned, that is to say, for every pledge upon which there has been lent not exceeding fifty cents, the sum of one half-penny (or five-sixths of a cent) for any time not exceeding one month, and the same for every month afterwards, including the current month in which the pledge is redeemed, although such month has not expired; and so on progressively and in the same proportion for every sum of fifty cents up to twenty dollars. 14-15 V. c. 82, ss. 6, 7.

When the sum lent exceeds \$20.

11. When the sum lent exceeds twenty dollars, the pawnbroker may take upon all beyond that amount after the rate of five cents for every four dollars by the month, and so on in proportion for every fractional sum. 14-15 V. c. 82, s. 6.

Which shall cover warehouse room.

12. Such sums respectively shall be in lieu of and taken as a full satisfaction for all interest due and charges for warehouse room. 14-15 V. c. 82, s. 6.

Time when and terms on which pawns redeemable.

13. The party entitled to and applying for the redemption of goods pawned, within fourteen days from the end of the first month after the same were pledged, may redeem such goods upon paying the rate or profit payable for one month and a half, but if redeemed after the expiration of the first fourteen days, and before the end of the said second month, the pawnbroker may take a rate or profit of the whole second month, and the like regulation and restriction shall take place in every subsequent month wherein application is made for redeeming goods pawned. 14-15 V. c. 82, s. 8.

Fractions.

14. In all cases where the lowest fraction of the sum to be received by any pawnbroker from persons offering to redeem goods is less than one half-penny (or five-sixths of a cent), the pawnbroker may receive one half-penny (or five-sixths of a cent) for the said fraction from the person redeeming the goods. 14-15 V. c. 82, s. 9.]

**10.** Every pawnbroker shall cause to be painted or printed in large legible characters the rate of profit by this Act or chapter sixty-one of the Consolidated Statutes of Canada allowed to be taken, and also the various prices of the notes or memorandums to be given according to the rates hereinafter mentioned, and an account of such as are to be given *gratis*, and of the expense of obtaining a second note or memorandum where the former one has been lost, mislaid, destroyed or fraudulently obtained, and shall place the same in a conspicuous part of the shop or place where the business is carried on, so as to be visible to and legible by persons pledging goods. C. S. C. s. 61, s. 15.

Rates to be exhibited.

C. S. C. c. 61.

**11.** Every pawnbroker who takes any goods by way of pawn or pledge, whereon a sum above one dollar is lent, shall, before he advances or lends the money thereon, enter in a fair and regular manner in a book to be kept by him for that purpose, a description of the goods received in pawn, pledge or exchange, and the sum lent thereon, with the day and year and name of the person by whom pawned, and the name of the street and number of the house, if numbered, where such person abides, and whether he is a lodger in or the keeper of such house, by using the letter L if a lodger, and the letter H if a housekeeper, and also the name and place of abode of the owner, according to the information of the person pawning the goods, into all which circumstances the pawnbroker shall inquire of the party before any money is advanced; and if the sum lent does not exceed one dollar, a similar entry shall be made within four hours after the goods have been pawned. C. S. C. c. 61, s. 16.

Entries to be made by pawnbrokers.

**12.** Every pledge upon which there is lent above two dollars, shall be entered in a book to be kept for that purpose, and to be kept separate from all other pledges, and every such entry shall be numbered in the book progressively as such goods are pawned in the following manner, viz.: the first pledge that is received in pawn No. 1, the second No. 2, and so on until the end of the month, and so on in every succeeding month throughout the year, and upon every note respecting such pledge shall be written the number of entry of the pledge so entered in the book aforesaid. C. S. C. c. 61, s. 17.

If above two dollars lent.

**13.** At the time of taking any pawn, a note or memorandum, written or printed, shall be given to the person pawning, pledging or exchanging the same, containing a description of the goods pawned, pledged or exchanged, and also of the money advanced thereon, with the day of the month and year, and the names and places of abode, and numbers of the houses of the parties, and whether lodgers or housekeepers, by using the letters aforesaid, and upon such note or memorandum, or on the back thereof, shall be written or printed the name and place of abode of the pawnbroker, which note or memorandum the

Note to be given to the pawnor.

party pawning the goods is required to take, and unless he takes the same, the pawnbroker shall not receive and retain the pledge. C. S. C. c. 61, s. 18.

Fees therefor. **14.** When the sum lent is under one dollar, the note aforesaid shall be given *gratis* ;

If the sum lent is one dollar and under two dollars, the pawnbroker may take one halfpenny or five-sixths of a cent ;

If two dollars and under five dollars, he may take one penny or one cent and two-thirds of a cent, and ;

If four dollars and under twenty dollars, he may take two pence or three and one-third cents ;

If twenty dollars and upwards, he may take four pence or six and two-thirds cents. C. S. C. c. 61, s. 19.

The note to be afterwards produced. **15.** The note shall be produced to the pawnbroker before he is obliged to re-deliver the goods, except as hereinafter provided. C. S. C. c. 61, s. 20.

A duplicate to be affixed to the goods. **16.** A duplicate of the said note or memorandum shall be affixed to the goods pledged, and in all cases where goods pawned are redeemed, the pawnbroker shall write or endorse, or cause to be written or endorsed on every duplicate, the profit taken by him for the pledge, and shall keep the duplicate in his custody for one year next following. C. S. C. c. 61, s. 21.

Penalty for pawning goods of others. **17.** If any person knowingly and designedly pawns, pledges or exchanges, or unlawfully disposes of the goods of any other person, not being employed or authorized by the owner so to do, any Justice of the Peace resident nearest to the place where the offence has been committed may grant his warrant to apprehend the offender ; and if he is thereof convicted by the oath of one witness, or by confession, before a Justice of the Peace, he shall forfeit not more than twenty dollars, nor less than four dollars, and also the value of the goods pawned, and if not forthwith paid, the convicting Justice shall commit him to the Common Gaol of the District or County where the offence was committed, there to remain and be kept to hard labour for not more than three months, unless the forfeiture is sooner paid. C. S. C. c. 61, s. 22.

Forfeitures, how applied. **18.** The said forfeitures when recovered shall be applied towards making satisfaction thereout to the party injured, and defraying the costs of the prosecution, as may be adjudged reasonable by the convicting Justice. C. S. C. c. 61, s. 23.

[Sections 24–27 of C. S. C. c. 61, are as follows :—

Forging pawn. **24.** If any person counterfeits, forges or alters any note or memoran-

dum given by a pawnbroker for goods pledged, or causes or procures the same to be done, or utters, vends or sells such note or memorandum, &c. knowing the same to be counterfeited, forged or altered, with intent to defraud any person, such offender shall be punished as hereafter mentioned. 14-15 V. c. 82, s. 13.

25. In case any note or memorandum aforesaid is uttered, shown or offered to any person, and such person has reason to suspect that the same has been forged, he may seize the person offering the same, and deliver him to a bailiff or constable, who shall convey him before some Justice of the Peace where the offence has been committed, or nearest thereto; and if upon examination it appears to the satisfaction of such Justice that such person is guilty, he shall commit him to the common gaol of the District or County for any time not exceeding three months. 14-15 V. c. 82, s. 13.

Persons suspected of forging, how dealt with.

26. If any person offers to any pawnbroker, by way of pawn or pledge or of exchange or sale, any goods, and is not able or refuses to give a satisfactory account of himself or of the means whereby he came possessed of the goods, or wilfully gives any false information to the pawnbroker or his servant as to whether such goods are his own property or not, or as to his name and place of abode, or as to the owner of the goods, or if there is any other reason to suspect that such goods have been stolen or otherwise illegally or clandestinely obtained, or if any person not entitled, nor having any colour of title by law to redeem goods that have been pawned, shall attempt to redeem, the person to whom the goods first above mentioned are offered to be pawned, or to whom the offer to redeem the goods in pawn is made, may seize and detain the person offering to pawn and the goods offered to be pawned, or the person offering to redeem as aforesaid, and shall convey such person and the goods offered to be pawned, or the person offering to redeem, and immediately deliver the person so offering to pawn and the goods offered to be pawned, or the person so offering to redeem, into the custody of a peace officer or constable, who shall, as soon as may be, convey such person and goods, or such person, as the case may be, before a Justice of the District or County. 14-15 V. c. 82, s. 14.

Consequences of not giving account of goods offered to be pawned.

27. If such Justice, upon examination and enquiry, has cause to suspect that the said goods have been stolen or illegally or clandestinely obtained, or that the person offering to redeem hath not any pretence or colour of right so to do, he shall commit the offender into safe custody for such reasonable time as may be necessary for obtaining proper information in order to be further examined, and if upon either examination it appears to the satisfaction of the Justice that the said goods were stolen or illegally or clandestinely obtained, or that the person offering to redeem had not any pretence or colour of right so to do, he shall, unless the offence authorizes such commitment by any other law, commit the offender to the Common Gaol of the District or County where the offence was committed, for any time not exceeding three months. 14-15 V. c. 82, s. 14.]

If a J. P. suspect goods to have been stolen.

19. If any person knowingly buys or takes in pawn or exchange from any journeyman mechanic, any goods of any manufacture or of any part or branch of any manufacture, either mixed or separate, or any materials plainly intended for manufacturing any goods after such goods or materials have been put into a state for any process or operation to be thereupon or therewith performed, and before such goods or materials have been finished for the purpose of wear or consumption, or any goods, materials, linen or apparel which have been entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish

Consequences of taking goods in pawn from journeymen.



or make up, and is convicted thereof upon confession, or on the oath of one witness, before a Justice of the District or County where the offence was committed, he shall forfeit the sum lent thereon, and forthwith restore the said goods or materials to the lawful owner. C. S. C. c. 61, s. 28.

Proceedings  
by owners of  
goods illegally  
obtained.

**20.** If the owner of goods of any manufacture, or part or branch of any manufacture, either mixed or separate, or of any materials plainly intended for manufacturing any goods after such goods or materials have been put into a state for any process or operation to be thereupon or therewith performed, and before such goods or materials have been finished for the purpose of wear or consumption, or of any linen or apparel which has been entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish or make up as aforesaid, or of any other goods whatsoever, which have been unlawfully pawned or exchanged, makes out either on his oath or by the oath or solemn affirmation of one witness, before a Justice aforesaid where such offence has been committed, that there is just cause to believe or to suspect that any person has taken to pawn or exchange any such goods without the owner's knowledge, and makes appear probable grounds for such suspicion, such Justice may issue his warrant for searching within the hours of business, the books, house, warehouse or any other place of the person so charged as suspected of having received the same without the privity of the owner; and if the occupier of such place, upon request made to him by any peace officer authorized to search, refuses to exhibit his pledge books, or to open such place as required to permit search to be made, the peace officer may break open the house, warehouse or other place on the said premises within the hours of business, and search as he may think fit for the goods suspected to be there, taking care to do no wilful damage, and no person shall oppose the same. C. S. C. c. 61, s. 29.

Search war-  
rant.

Of goods found  
concealed.

**21.** If after such refusal and upon forced search, any goods so pawned or exchanged as aforesaid are found, and the property of the owner is made out to the satisfaction of the Justice, by the oath, or solemn affirmation of one witness, or by the confession of the person charged, the Justice shall cause the goods to be forthwith restored to the owner, and the occupier shall be fined not less than eight nor more than twenty dollars, to be recovered as other fines before mentioned. C. S. C. c. 61, s. 30.

If goods not  
redeemed  
within a year,  
and pawn-  
broker refuses  
to restore.

**22.** In case, within one year after any goods have been pawned or pledged for securing money lent, the pawnor, or other person on his behalf, tenders to the person who lent the money the note or memorandum required to be given by this Act, and also the principal money borrowed, and the profit according to the rates of this Act, and the person who took the goods in pawn neglects or refuses, without reasonable cause, to deliver

back the goods so pawned, the pawnor may make oath thereof before a Justice of the District or County where the offence has been committed, and such Justice shall cause such person to come before him, and shall examine on oath the parties themselves, and such other credible persons as appear before him touching the premises, and if tender of the note or memorandum, with the principal sum lent, and all profit thereon, is proved on oath to have been made within the time aforesaid, then on payment by the borrower of such principal money and the profit due thereon to the lender, and in case the lender refuses to accept thereof on tender before the Justice, such Justice shall thereupon, by order under his hand, direct the goods so pawned forthwith to be delivered to the pawnor, and if the lender neglects or refuses to deliver up or make satisfaction for the goods as such Justice orders, the Justice shall commit him to the common gaol of the District or County where the offence was committed, until he delivers up the goods according to the order, or makes satisfaction for the value thereof to the party entitled to the same. C. S. C. c. 61, s. 31.

**23.** The person who produces the note or memorandum aforesaid, and requires a delivery of the goods mentioned therein, shall be deemed the owner, so far as concerns the person who has the goods in pledge, and the pawnbroker, on receiving the principal and profit aforesaid, shall deliver the goods to the person producing the note or memorandum, and he shall be indemnified, unless he has had notice in writing from the real owner not to deliver the goods to the person producing the note or memorandum. C. S. C. c. 61, s. 32.

Holder of note  
to be considered  
owner.

**24.** In case a pawnbroker has had such previous notice, or in case the note or memorandum has been lost, mislaid, destroyed, or fraudulently obtained from the owner, and the goods mentioned therein are unredeemed :

Proceedings if  
pawnbroker  
notified not to  
deliver.

1. The pawnbroker with whom the goods have been pledged shall, at the request of the person who represents himself as the owner thereof, deliver to such person a copy of the note or memorandum, with the form of an affidavit of the particular circumstances attending the case written thereon, as the same are stated to him by the party applying for the goods ;

2. The person receiving such copy and form of affidavit shall thereupon prove his property in or right to the goods to the satisfaction of some Justice of the Peace, and shall also make oath to such affidavit, before such Justice, of the truth of the particular circumstances attending the case therein mentioned ;

3. The pawnbroker shall then suffer the person proving such property to redeem the goods on leaving such copy of the

note or memorandum, and the affidavit, with him the pawnbroker ;

4. In case the money lent does not exceed one dollar, the pawnbroker may receive for such copy and affidavit, one penny or one and two-thirds cents ; if above one dollar, and not exceeding four dollars, two pence or three and a third cents ; and if above four dollars, five cents. C. S. C. c. 61, s. 33.

When goods  
may be sold.

**25.** All pawned goods shall be deemed forfeited, and may be sold at the expiration of one year from the time of pawning the same, exclusive of the day on which they were pawned. C. S. C. c. 61, s. 34.

At public  
auction.

**26.** When the sum lent exceeds two dollars, the goods shall be sold by the pawnbroker at public auction, and not otherwise. C. S. C. c. 61, s. 35.

Before sale,  
goods to be  
exposed to  
view.

**27.** Before such public sale, the goods shall be exposed to public view, and a catalogue thereof published, containing the name and place of abode of the pawnbroker, a description of the goods separately, the month the goods were received in pawn, and the number of the pledge ; and an advertisement giving notice of such intended sale, and containing the name and abode of the pawnbroker, and the month the goods were received in pawn, shall be inserted on two several days in some public newspaper, two days at least before the day of sale. C. S. C. c. 61, s. 36.

Penalty for not  
properly de-  
scribing.

**28.** In case the goods are not described separately in the catalogue, the pawnbroker shall forfeit to the owner of the pledge not less than eight dollars nor more than forty dollars, to be recovered as other fines under this Act. C. S. C. c. 61, s. 37.

Account of  
sales to be  
kept and  
booked.

**29.** Every pawnbroker shall enter in a book, to be kept for that purpose, a just account of the sale of such goods by auction, expressing therein the day of the month the same were pledged, the name of the person who pledged, the day when and the money for which each pledge was sold, and the name and abode of the auctioneer. C. S. C. c. 61, s. 38.

Disposal of  
surplus.

**30.** In case such goods have been sold for more than was due thereon, and in case of demand within three years after the sale, the overplus shall, after deducting the necessary costs and charges of the sale and catalogues, be paid to the person by whom or on whose account the goods were pawned. C. S. C. c. 61, s. 39.

Pawnor may  
inspect entries

**31.** The person who pawned such goods, or the person for whom they were pawned, shall be permitted to inspect the

entry made of such sale, on paying five cents for the inspection. C. S. C. c. 61, s. 40.

**32.** In case the pawnbroker refuses an inspection of such entry to the person who pawned the goods, or to his executor, administrator or assignee, upon the production of the letters testamentary, letters of administration or assignment, or in case the goods were sold for more than the sum entered in such book, or in case the pawnbroker did not make such entry, or did not *bona fide* sell the goods according to this Act, or refuses to pay the overplus on demand, he shall forfeit forty dollars, and treble the sum the goods were originally pawned for, to the person by whom or on whose account they were pawned, to be recovered as other fines under this Act; and if such forfeiture is not forthwith paid, the sum shall be levied by distress by warrant of the Justice before whom the conviction is had. C. S. C. c. 61, s. 41.

Consequence  
of refusal to  
permit.

**33.** No pawnbroker having goods in pledge shall, either by himself or any other person for him, except at a public auction, purchase such goods during the time they remain in his custody as a pledge. C. S. C. c. 61, s. 42.

Pawnbrokers  
not to purchase  
goods except at  
public auction.

**34.** No pawnbroker shall—

Restrictions  
upon pawn-  
brokers.

1. Purchase, receive or take any goods in pledge, from any person who appears to be under the age of fifteen years, or to be intoxicated with liquor; nor

2. Purchase or take in pawn, pledge or exchange, the note or memorandum aforesaid of any other pawnbroker;

3. Employ any servant or other person under sixteen years of age to take any pledge;

4. Receive any goods by way of pawn, pledge or exchange, on any Fast or Thanksgiving Day appointed by authority, or on Sunday, nor on any other day, before eight o'clock in the morning, nor after eight o'clock in the evening, except on Saturday evenings, and the evenings preceeding Good Friday and Christmas Day, at which last times the pawnbroker may keep his place of business open until ten o'clock in the evening. C. S. C. c. 61, s. 43.

**35.** In case it appears or is proved on oath before a Justice of the Peace, that the goods pawned were sold before the time limited, or have been embezzled or lost, or have become of less value than when pawned through the neglect or wilful misbehaviour of the pawnbroker or his servants, the Justice shall award a reasonable satisfaction to the owner in respect of such damages. C. S. C. c. 61, s. 44.

If goods lost  
or damaged.

Awards.



Terms of redemption of such goods—tender of difference.

**36.** In case the sum so awarded does not amount to the principal and profit due to the pawnbroker, the pawnor may pay or tender the balance; and on so doing, the Justice shall proceed as if the pawnor had paid or tendered the whole money due for principal and profit as aforesaid. C. S. C. c. 61, s. 45.

When without any tender.

**37.** In case the satisfaction allowed is equal to or exceeds the principal and profit as aforesaid, the pawnbroker shall deliver the goods so pledged to the owner without being paid anything for the principal or profit, and also the excess, if any, under penalty of forty dollars, to be recovered as penalties hereinbefore mentioned. C. S. C. c. 61, s. 46.

Pawnbroker bound to produce.

**38.** When the Justice thinks the production of any pawn-book, note, voucher, memorandum, duplicate or other paper necessary, which is or ought to be in the hands, custody or power of any pawnbroker, he shall summon him to attend with the same, and the pawnbroker shall be bound to produce the same in the state in which it was when the pawn was received; and in case the pawnbroker neglects or refuses to attend or to produce the same in its true and perfect state, he shall, unless he shows good cause to the satisfaction of the Justice, forfeit not less than twenty dollars nor more than forty dollars, to be levied and recovered as fines hereinbefore mentioned. C. S. C. c. 61, s. 47.

Limitation of prosecutions.

**39.** No pawnbroker shall be liable to any prosecution before a Justice under this Act, unless information is given within twelve months next after the offence committed. C. S. C. c. 61, s. 48.

What Justice may act.

**40.** Such prosecution shall be before some neighbouring Justice of the place where the offence was committed, but no person who has been convicted of fraud or felony shall prosecute or inform against any person for an offence against this Act. C. S. C. c. 61, s. 49.

Who cannot be informers.

Act to extend to executors, administrators, etc.

**41.** The provisions of this Act shall extend to the executors, administrators and assigns of every deceased pawnbroker, and also to the executors, administrators and assigns of the pawnor, but such executor, administrator or assign shall not be answerable for any penalty, personally or out of his own estate, unless forfeited by his own act. C. S. C. c. 61, s. 50.

No fee on Justice's summons.

**42.** No fee shall be taken for any summons or warrant granted by any Justice under this Act, so far as the same relates to goods pawned, pledged or taken in exchange. C. S. C. c. 61, s. 51.

Stay of execution pending appeal.

**43.** In case of an appeal from the judgment of a Justice or Justices under this Act, the execution of the judgment

shall be suspended, upon the person convicted entering into a recognizance, at the time of the conviction, with two sureties, in double the sum he has been adjudged to pay, to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the Court of General Sessions, and to pay such costs as may be awarded at the Sessions. C. S. C. c. 61, s. 53.

**44.** In case the judgment is affirmed, the appellant shall immediately pay the sum adjudged to be forfeited, together with such costs as the Court awards, or in default thereof, he shall suffer the penalties inflicted by this Act upon persons who do not upon conviction pay the forfeitures hereby imposed. C. S. C. c. 61, s. 55.









Statutes  
Ont

11385;  
Ontario. Statute  
The revised  
Vol. 1

For use in  
the Librar-  
ONLY

之

C



3 1761 11548734 0

